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ABSTRACT

This legislatively mandated study is an outgrowth of California's new special education finance law that changed the basis of special education funding to a census system based on the total number of students enrolled in a school district. The study interviewed program directors, school administrators, and policy advisors on whether the state should alter the funding provisions for nonpublic school (NPS)/licensed children's institution (LCI) students. Results of the study indicate: (1) NPSs and nonpublic agency placements were considered important components of special education services, however, concerns were raised because of the high number of students using NPS and NPA services; (2) a general concern existed about the lack of state standards to guide decisions on which programs are appropriate for children with special education needs; (3) there were concerns that placing students in an NPS may be increasingly viewed as the path of least resistance; (4) there is too little emphasis on transitioning students from NPS back to public school settings; and (5) respondents believed the due process system is not working well and mediators and hearing officers lack qualifications. Policy recommendations are discussed. Appendices include data charts. (Contains 12 references.) (CR)

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Special Education: Nonpublic School and Nonpublic Agency Study

Final Report

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September 30, 1998

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- Interview respondents who took the time to participate in our site visits and telephone surveys, including representatives of:

  California SELPA directors
  California NPS and NPA directors
  State directors of special education
  California state policy representatives
  California Special Education Hearing Office at the McGeorge School of Law

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Abstract

This legislatively mandated study is an outgrowth of California's new special education finance law, Assembly Bill 602 (1997). AB 602 changed the basis of special education funding from a unit system based on the number of special education students served to a census system based on the total number of students enrolled in a school district. This new funding system substantially reduces fiscal incentives to place special education students in nonpublic schools (NPSs). However, because the state will continue to reimburse 100% of the educational costs for licensed children's institution (LCI) students in NPSs, the fiscal incentive to place LCI children in a NPS is not removed under AB 602. In fact, because the new law provides no additional state aid for a public school placement of these children, the fiscal incentive to place LCI students in an NPS is enhanced under AB 602. These policies may not be in the best interests of children in LCIs and may violate federal requirements that special education students be placed in the least restrictive environment (LRE) appropriate to their needs.

The main purpose of this study is to consider whether the state should alter the funding provisions for NPS/LCI students under AB 602, and if so how this should be done. The study also addresses how the costs of public school placements compare with NPS and nonpublic agency (NPA) placements, why some districts rely on NPS and NPA placements more than others, and the effect of mediation and due process hearings on the use of NPS/NPAs. These questions are addressed through the analysis of state-level data, information submitted to the state by NPSs and NPAs, interviews with SELPA directors, visits to public and nonpublic sites, interviews with representatives of state-level agencies, interviews with directors of state special education departments from other states, and a series of meetings and consultations with the advisory committee for this project. This advisory committee was comprised of representatives from public schools, NPSs, and state agencies. This study was monitored by the State Legislative Analyst's Office in cooperation with the Department of Education and the Department of Finance.

Chapter 1

Introduction

The passage of the Poochigan and Davis Special Education Reform Act (Assembly Bill (AB) 602, Chapter 854, Statutes of 1997) is "perhaps the most revolutionary legislative action in the history of California special education" (Kennedy, Fall 1997, p. 20). When AB 602 goes into effect in the 1998 fiscal year, the basis for special education funding will be the total number of students enrolled in a special education local plan area (SELPA) rather than the number of special education students being served. This population based funding system is intended to ensure greater funding equity among SELPAs and to eliminate financial incentives to inappropriately place students in special education programs.

Although AB 602 removes most major fiscal incentives for SELPAS to use NPSs and NPAs, there continues to be an incentive to provide special education programs for students residing in licensed children's institutions (LCIs) at nonpublic schools (NPSs). The instructional programs for these students will continue to be reimbursed 100% by the state. To address this and other issues, AB 602 mandated this study of NPSs and nonpublic agencies (NPAs). Because AB 602 removes most incentives to use NPAs, more emphasis is given to issues related to NPSs, with special attention paid to issues pertaining to NPS/LCI students.

Purpose of the study

This study investigates four questions:

1. How do local NPS and NPA placements work?--What factors affect the decisions to use NPSs and NPAs?
2. What impact do mediation and due process have on the use of NPSs and NPAs?
3. How do the costs of public school placements compare to placements in NPSs and NPAs?
4. How should the state pay for NPS placements for LCI students?

Approach

These questions are addressed through interviews with directors of California SELPAs, NPSs, and NPAs, as well as people knowledgeable of state policy. To understand how other states are dealing with this issue, we also interviewed a sample of state directors of special education. Site visits to NPSs, LCIs, and other organizations (e.g., the Special Education Hearing Office) were also conducted. The California Special Education Management Information System (CASEMIS) file, the California Basic Educational Data Systems (CBEDS) file, J-50 school district financial reports, NPS certification applications, and data from a prior NPS study (Parrish, 1987) were used for the cost analysis called for in question 3. Appendix A describes the data, sampling procedures, and other methodological issues in more detail.

An advisory committee was also formed to provide guidance and feedback throughout the study. The committee was comprised of two SELPA directors, the president of California Association of Private Specialized Education and Services (CAPSES), one County Office of Education program administrator (who was involved in implementing a pilot program designed as an alternative to NPS), and a representative from the Department of Education. Five meetings were held with the committee throughout the study.

Overview of NPSs and NPAs

According to the *California Education Code 56034*, a "'nonpublic, nonsectarian school' means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the department." NPSs offer classes that cater to the needs of special education students. The classes range from academic subjects that meet graduation requirements to life skills classes.

As stated by the *California Education Code 56035*, a "'nonpublic, nonsectarian agency' is defined as a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupils' educational program pursuant to an individualized education program and that is certified by the department." NPAs can consist of one or multiple service providers that are contracted by districts and NPSs. NPAs are generally associated with different types of therapies. In the past, school districts may have been more likely to use NPAs rather than their own employees because under prior law the state paid 70 percent of these costs. Upon implementation of AB 602, however, districts may be more likely to hire their own therapists to work with special education students.

LCIs are of relevance to this analysis of NPS and NPA costs and funding formulas because of special provisions that only apply to the children residing in them. Because LCI children are generally placed in particular areas by noneducational agencies, the state pays 100 percent of the instructional costs for these students when they require NPS and/or NPA services. Because LCI students may disproportionately be located in some school district enrollment areas, it seems fair that the state should absorb 100 percent of any extraordinary costs associated with their schooling.

The problem with these provisions, however, and a major focus of this study is that they also create a strong fiscal incentive for districts to place LCI children in NPSs and NPAs. The concern is that these services may be more intensive than may be required. An additional concern is that NPS programs tend to isolate these children from their non-disabled peers. Unless such restrictive placements are fully appropriate to meet the special needs of these children, they are in violation of federal law under the Individuals with Disabilities Education Act (IDEA).

Special education placement patterns in California and across the nation

Table 1-1 shows cost estimates per student and percentages of students by category of disability for California and the nation as a whole. The cost estimates are derived from a California Study on Special Education Incidence (1998) and from the last national special education expenditure study (1988). These national estimates are reported in current dollars.

In terms of assignment to alternative categories of disability, it is interesting to note that California assigns a considerably smaller percentage of its special education students to the categories mental retardation (MR) (6 % versus 11 %) and serious emotional disturbance (SED) (3 % versus 9 %). Also, given California's considerable influence on these national averages, with approximately 12 % of the nation's school children residing in the state, the magnitude of the differences in MR and SED identification rates in California is understated by these figures.

This table also shows percentage distributions by category of disability for four major alternative placement settings. The placement settings are divided into the categories, self-contained class or special day class (SDC), resource teacher or resource specialist program (RSP), related or designated instructional service (DIS), and private special education or nonpublic school (NPS).

Table 1-1. Percent of Special Education Students in California and the Nation by Placement and Disability

CALIFORNIA

	Avg Cost/ Student	Percent of Total	Percent Breakout by Placement			
			% SDC	% RSP	% DIS	% NPS
MR	$8,312	6%	18%	1%	0%	6%
HH	$9,740	1%	2%	0%	1%	1%
DEAF	$15,102	1%	2%	0%	0%	1%
SLI	$1,991	26%	8%	6%	88%	2%
VI	$14,381	1%	2%	0%	1%	0%
SED	$14,989	3%	5%	1%	0%	62%
OI	$12,782	2%	5%	1%	1%	1%
OHI	$5,677	2%	2%	2%	3%	3%
SLD	$4,152	56%	50%	89%	5%	18%
DB	$24,250	0%	0%	0%	0%	0%
MH	$15,821	1%	3%	0%	0%	2%
AUT	$13,571	1%	3%	0%	0%	5%
TBI	$11,193	0%	0%	0%	0%	0%
Total	$4,811	100%	100%	100%	100%	100%

NATIONAL

	Avg Cost/	Percent of	Percent Breakout by Placement			
MR	$7,410	11%	28%	10%	2%	21%
HH	$8,917	1%	2%	1%	1%	6%
DEAF			0%	0%	0%	0%
SLI	$1,973	22%	6%	7%	44%	7%
VI	$7,993	1%	0%	0%	1%	2%
SED	$7,029	9%	13%	7%	4%	32%
OI	$8,345	1%	2%	1%	1%	2%
OHI	$8,886	1%	1%	1%	1%	3%
SLD	$3,443	51%	44%	71%	45%	10%
DB	$35,008	0%	0%	0%	0%	0%
MH	$12,087	2%	4%	1%	0%	13%
AUT	$13,283	0%	1%	0%	0%	2%
TBI			0%	0%	0%	0%
Total	$4,379	100%	100%	100%	100%	100%

Of particular interest to this study of NPSs is the fact that 62 % of the NPS population in California are SED students. While they are also the largest population in private special education schools across the nation, at 32 % their representation is still considerably smaller than in California. This much larger percentage of SED students in NPSs in California is despite the fact that the overall percentage of SED students across the nation is three times greater than for California (9 % versus 3 %). Thus, the population of students served in NPSs in California is considerably different than for the nation as a whole, and even more pronounced than is shown in Table 1-1 given California's influence on the national averages included in this table.

These differing assignment patterns by disability are also reflected in the cost estimates shown in Table 1-1. At nearly $15,000 per student SED students in California are estimated to cost more than twice the average across the nation. As California appears to be more selective regarding who is assigned to the disability category SED than is true across the nation, it is not surprising that these students have more intensive needs and are therefore more costly to serve. It is interesting to note, however, that 37 percent of all SED students in California are being served in nonpublic schools.

A profile of NPS and NPS/LCI students in California

Table 1-2 provides descriptive information regarding California students in special education, in NPSs, and NPS/LCIs. In the first row, the total number of students in each of these types of placements is shown. Approximately 1.9 % of all special education children are placed in NPSs and slightly more than one-half of these reside in an LCI.

Table 1-2 further categorizes these special education students by disability. It is interesting to note the very different percent representation by disability as found in these three types of settings. Most striking is the disability category of Seriously Emotionally Disturbed (SED). While SED students comprise only 3 percent of the state's special education population, nearly 62 percent of the students placed in NPSs are SED. The disability categories Mentally Retarded (MR), Speech and Language Impaired (SLI), Seriously Emotionally Disturbed (SED), Orthopedically Impaired (OI), Specific Learning Disabled (SLD), Multihandicapped (MH), and Autism (AUT) also comprise significant proportions of NPS enrollments.

Table 1-2. Percent Composition of Students in Special Education, NPS, and NPS/LCI by Disability

	Special Education	NPS	NPS/LCI
Number of Students	600,979	11,264	6,665
Disability Category			
Mentally Retarded	5.74	6.09	14.76
Hard of Hearing	0.99	0.51	0.29
Deaf	0.57	0.51	0.36
Speech and Language Impaired	26.30	1.64	2.43
Visually Impaired	0.67	0.42	1.44
Seriously Emotionally	3.14	61.73	41.70
Orthopedically Impaired	2.15	0.60	6.75
Other Health Impaired	2.47	2.81	2.10
Specific Learning Disabled	55.69	18.46	20.80
Deaf-Blind	0.03	0.05	0.32
Multihandicapped	1.07	2.28	5.75
Autism	1.04	4.64	3.08
Traumatic Brain Injury	0.15	0.24	0.24

Note: Data taken from California Special Education Management Information System (CASEMIS).

The differing percentage composition of these categories of students in special education overall, in NPS, and in NPS/LCI are further illustrated in Figure 1-1. Here it is noted that some disability categories are much more highly represented in NPSs than in special education overall. This is true for mental retardation (MR), seriously emotionally disturbed (SED), orthopedically impaired (OI), multi-handicapped (MH), and autism (AUT). Conversely, while the categories speech and language impaired (SLI) and severe learning disabilities (SLD) predominate special education overall, their percentage representation drops off substantially in NPSs. Despite this drop, however, SLD remains the second largest category of disability served in NPSs.

Figure 1-1: Percent Composition of Students in Special Education (SE), NPS, and NPS/LCI by Categories of Selected Disability

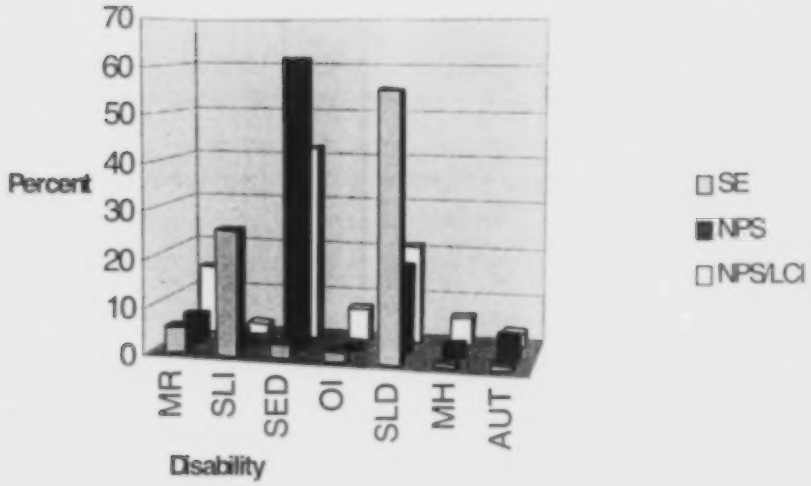

Table 1-3 shows that about two-thirds of special education, NPS, and NPS/LCI students are male. By racial category, it is interesting to note that white students are somewhat over represented in NPSs and NPS/LCIs in relation to their percentages among all special education students. This point is further pursued in Chapter 2. The NPS and the NPS/LCI populations are considerably older than the overall population of special education students. Over 50 percent of NPS/LCI students are over 16 years of age as opposed to less than 20 percent of all special education students.

Table 1-3. Percent Composition of Students in Special Education, NPS, and NPS/LCI by Gender, Racial Category, and Age

	Special Education	NPS	NPS/LCI
Number of Students	600,979	11,264	6,665
Gender			
Male	66.91	77.00	69.09
Female	33.09	23.00	30.91
Race Category			
White	43.95	49.01	50.71
Non-white	56.05	50.99	49.29
Age Category			
0-12 years	50.43	20.55	17.60
12-16 years	31.08	36.75	31.54
More than 16 years	18.48	42.70	50.86

Note: Data taken from California Special Education Management Information System (CASEMIS).

State and federal laws and regulations pertaining to NPS funding

NPS placement provisions under the Master Plan

The California Master Plan (MP) was first proposed in 1974 as a method of unifying the diverse funds supporting the variety of special education programs in the state. The amount of funding districts received was driven by the number of special day classes (SDC), resource programs (RSP) and designated instructional services (DIS) provided. Although the funding component of the MP was reasonable in its design as a cost-based unit funding system, over time it was seen as unduly complex and vastly inequitable (California Legislative Analyst's Office, Department of Education, and Department of Finance, 1995).

The funding component of the MP was comprised of two sets of provisions. In addition to the base formula, there were separate funding provisions for students served by NPSs or NPAs. A SELPA could either serve students with disabilities

locally or contract for services with NPSs and/or NPAs, which were generally reimbursed at 70 percent.[1] For many SELPAs, this created a fiscal incentive to use NPS or NPA, as opposed to public provided, services.

These types of fiscal incentives for serving students with disabilities in NPSs and NPAs led to the decision to include such costs for non-LCI students in the overall population based allocation as part of the Chapter 854 (AB 602) formula, as described below. In addition, the state has attempted to contain the rising costs associated with NPS through the passage of SB 989 (Chapter 944/96, Polanco). Largely a regulatory bill, SB 989 implemented personnel qualification standards, state certification requirements, and contractual regulations.

NPS placement provisions under Chapter 854

California's new special education funding law radically departs from the prior funding model. From a fiscal perspective, the fundamental difference is that the basis for the system is the total number of students enrolled in a SELPA, rather than the number of special education students being served. Another important element of this new formula is how students served in NPSs are treated for funding purposes.

These new funding provisions contain several elements with potential to affect special education services in California. First, virtually all the placement driven fiscal incentives associated with the old formula disappear with the new system. For the most part, the amount of funding received under the new provisions are the same regardless of how or where children with special education needs are served. In addition, as the state's current 70 percent reimbursement for the cost of placing students in NPSs is rolled into the basic funding formula, any incentive to place students in NPSs that may have existed under the old formula will largely disappear. This may result in NPS students returning to neighborhood schools over time. However, in cases where the local public cost will clearly exceed the NPS cost to the district, incentives for NPS use will remain. In addition, because the state will continue to reimburse 100 percent of NPS costs for LCI students, a strong fiscal incentive in favor of this type of placement will continue to exist. In fact, under the new law this incentive is substantially increased.

1. Education Section 56740 requires that the 70 percent reimbursement of district claims be reduced to take account of statewide special education program deficits. Therefore, district contributions often exceed the 30 percent specified in law and encroach on available local funds for other non-special education programs.

NPS placement provisions under the "old" federal law

The reauthorization of the Individuals with Disabilities Act (IDEA 97) contained some important provisions related to the financing of special education, some of which may have direct application to NPS funding in California. One important issue pertains to state funding mechanisms that provide incentives for serving special education students in more restrictive settings, which conflicts with the least restrictive environment (LRE) provisions of IDEA. For example, some state formulas, including California's, reimburse school districts when students are placed in private or regional public settings, but do not offer comparable assistance for establishing programs in neighborhood schools. In other words, these dollars are not always able to follow students into the less restrictive settings that may better suit their education needs. In addition to NPS related incentives, other states may offer alternative funding levels for placement in public and/or private settings, but do not include the general education classroom as a placement option. These types of provisions may create a disincentive for placing special education students in the LRE.

Prior to IDEA '97, the Office of Special Education Programs initiated challenges to states with such restrictive funding provisions through its monitoring system. For example, New York was the recipient of one of these challenges. Thus, even under old federal law, state funding systems that were seen to violate IDEA's LRE provisions could be considered out of compliance.

NPS placement provisions in the reauthorized federal law

NPS placement provisions are bolstered under IDEA '97. The law now mandates that states with funding systems that distribute money based on the type of setting in which a child is served have policies and procedures to assure that these placements do not violate the LRE requirement. If such policies are not in place, the state must revise the funding mechanism to ensure that it does not result in inappropriate restrictive placements.

Whether California's special education funding system under AB 602 is out of compliance with federal law is open to question. For example, the provisions in IDEA '97 against fiscal incentives for restrictive placements appear to primarily refer to states' basic special education funding formula. In addition, under the new special education finance provisions in California, virtually all of the fiscal incentives for more restrictive NPS placements have been removed, with the exception of the continuing 100 percent reimbursement of LCI students who attend NPS. However, compliance with federal law is not the only criterion that should be used in assessing the state's NPS/LCI funding provisions. If they foster

placements for LCI students with disabilities other than what would be chosen under the prescribed professional judgment provisions of the IDEA, they are likely to result in inefficiencies (i.e., public funds spent in a manner that is contrary to best professional judgement) and not be in the best interests of LCI children.

The problem is *not* the existence of a continuum of placements for students with disabilities that includes separate public and private schools. Rather, it is the presence of fiscal *incentives* that *encourage* these restrictive placements that may be in conflict with IDEA. Thus, while a continuum of placements is required by federal IDEA law, the state's funding mechanism should not *favor* certain types of placements, but rather focus on best meeting the individual needs of the student. This issue, particularly as it pertains to LCI students, is the primary focus of this report.

Summary of findings and recommendations

Our interviews, site visits, and advisory committee meetings led to several major themes that prevailed across the four main study questions. They are summarized below and discussed in greater detail later in the report.

Almost everyone interviewed considered NPSs and NPAs important components of the state's continuum of special education services. However, concerns have been raised because of the high number of students using NPS and NPA services and the rising total expenditure on these measures. However, because patterns of NPS and NPA use may change significantly following the enactment of AB 602, monitoring these changes will be important to gain a better understanding of the other factors affecting these trends. At the same time, the continued incentive to serve LCI students in NPSs is problematic. A funding system that encourages SELPAs to make placement choices that best meet students' needs must be free of fiscal incentives favoring one type of placement over another.

Our data also suggest that there is a general concern about the lack of state standards to guide decisions as to the extent to which certain programs are appropriate for children with special education needs. As certain types of therapies (e.g., discrete trial therapy (DTT) for children with autism) become better known, there is increased demand from parents to provide these services. The absence of state standards contributes to the reluctance of many SELPAs to participate in hearings for fear they will lose; thus, they report that they sometimes agree to provide programs they consider unnecessary and inappropriate. The state may wish to consider the development of state guidelines to assist SELPAs in making determinations in the case of such therapies as DTT.

Another issue is that labeling students as special education and placing them in an NPS may be increasingly viewed as the path of least resistance for some students. For example, for SED students the services at NPSs and NPS/LCIs compare very favorably with some of the other alternatives they may face under the criminal justice system or the Department of Mental Health. The racial composition of students served in NPS and NPS/LCI in relation to those found in the California Youth Authority suggests that these alternative placements are not equally distributed across all racial groups. Disproportionate patterns of placement appear especially pronounced for Hispanic students. Clearer lines of responsibility may be needed across state agencies and the role of special education in relation to other services more clearly defined and more uniformly applied statewide. Further investigation of some of the specific factors leading the very different placement patterns observed for Hispanic students may also be needed.

Concerns were also expressed that there is too little emphasis on transitioning students from NPS back to public settings. SELPAs need to be provided with the necessary resources to monitor the progress of all students to determine when they are ready to return to less restrictive settings.

It was also mentioned that when students enter SELPAs with no prior notification or records, it is especially difficult for local officials to know about individual student's needs. Placing agencies should provide SELPAs with information about those students immediately upon arrival.

The transition for new students is further exacerbated when the student carries with documentation from another agency that suggests the need for certain placements or therapies that the district believes are inappropriate. Because of this potential conflict, agencies should be precluded from recommending services to be provided by other agencies.

Finally, some respondents perceived that there was pressure created by some LCIs to place students in NPSs owned by the same organization that runs the LCI. To address this, provisions (e.g., from AB 602 and SB 933) should be reviewed for adequacy and more clearly enforced to separate decisions regarding residential placement from the most appropriate educational setting for LCI students.

Several important findings regarding the impact of mediation and due process on the use of NPSs and NPAs also emerged. In general, respondents believed that although the due process system exists to protect student rights, it is not working well as currently configured. Litigation is viewed as costly and adversarial, and fosters a sense of powerlessness among districts in their ability to present alternatives to costly programs that are not substantiated by research. Mediators and hearing officers are perceived as

lacking certain qualifications considered important, such as strong backgrounds in special education and law. Instead of a sole hearing officer or mediator deciding a case, a balanced team of special educators, lawyers, and other representatives may be needed. Given the importance and financial implications of these cases for students and school districts, current levels of compensation for hearing officers may also need to be reviewed. In addition, responses to mediation and alternative dispute resolution programs that are currently in place were generally favorable, and thus should continue to be supported and encouraged.

Analyses of extant data were conducted to compare costs of public school placements to NPS placements. Overall, the findings suggest that the average expenditure per student is somewhat higher in NPSs, but that NPSs generally appear to be serving more difficult students with greater service needs. Thus, higher NPS costs are not surprising. However, perhaps of greater concern, is the considerable variation in costs and levels of provision across NPSs. It is important to note that the issue of comparing public to NPS costs may be less important in light of the implementation of AB 602.

The question of how the state should pay for NPS placements for LCI students is of central interest to this study. Fiscal incentives to place LCI students in NPS will become more pronounced with AB 602, and changes must be made to the funding formula to remove these incentives. Funding for LCI students should be based on factors other than special education identification, specific disability categories, or types of placement. Additionally, funding should be sufficient to fully offset supplemental local costs such as assessment, monitoring, and transition.

Detailed listing of findings and recommendations for each of four main study questions

I. How do local NPS and NPA placements work? What factors affect the decisions to use NPS and NPA?

Main Issues		Policy Recommendations	
1.	**Almost everyone interviewed considered NPS and NPA important components of the state's continuum of special education services.** NPS are often used to serve children that the public schools believe they can not handle well. Districts generally contract with NPA for services they cannot provide well themselves (e.g. because of their specialized nature, or due to supply and demand issues that make it difficult to hire such specialists as physical therapists.)	1.	The provisions of AB 602, which remove many of the incentives that some districts currently have to use NPS or NPA, are likely to mitigate some of the concerns about the growing use of these services. **In response to AB 602, patterns of use may change fairly substantially over the next few years. The state may wish to monitor these developments to track changes in NPS and NPA use over time.** The state's student data file, CASEMIS, is potentially a valuable source of information about the numbers, types, and characteristics of students being served by NPS. The state must, however, adopt uniform NPS school codes for the CASEMIS system to maximize the utility of this database.
2.	There are growing concerns regarding possible conflicts of interests inherent to the current NPS/NPA placement system. **Pressure is sometimes created by some LCIs to place students in NPS owned by the same organization that runs the LCI.**	2.	**Prohibitions of conflicts of interest, as specified under federal law (IDEA), AB 602 and subsequent state laws (eg., SB 933) should be implemented monitored, and enforced.** In addition, study in this area is needed. An analysis of the extent of these conflicts and suggested remedies should be included.

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3.	Before AB 602, there was considerable fiscal incentive to place students residing in licensed children's institutions (LCI) into NPSs. SELPAs received supplemental funding for serving LCI students in public settings and 100% reimbursement when served by NPSs or NPAs. **With AB 602, the incentive will be even more pronounced. SELPAs will receive no supplemental support for public services, but will still be reimbursed 100% when served by NPSs.**	3.	**All fiscal incentives for identifying certain types of LCI students as needing special education and for placing them in NPSs should be removed.** Full recommendations are described under Question 4 of this study.
4.	**A major problem remaining after AB 602 regarding NPA use pertains to growing demands for therapeutic services, e.g. physical, occupational, and discrete trial therapies.** In the absence of state standards regarding accepted methodologies and appropriate levels of service, these issues are being decided through due process on a case by case basis. Without any guidelines, there is considerable pressure on the state's due process system and on SELPAs that wish to avoid hearings.	4.	**See Question 2, recommendation 4, regarding the possible need for state involvement in establishing standards of service and reform of the state's due process system.**
5.	**Special education is likely to be considered the most preferred approach to getting services in relation to other alternatives (e.g., the criminal justice system, social services, CCS, mental health, or expulsion from school) for students.** Only special education provides a clear entitlement for the child, timelines that are rigorously enforced, full public funding, and procedural guarantees. This appears likely to increase pressure on the state's special education system in relation to the public sector alternatives.	5.	**Clearer lines of responsibility may be needed across state agencies.** The role of special education in relation to these alternative services needs to be more clearly defined, timelines and procedural guarantees may need to be more closely aligned.

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6.	**Group homes and LCIs sometimes solicit/accept educational rights from parents, which may result in a conflict of interest regarding the most appropriate placement of the child.**	6.	**Legislation should be enacted to prohibit employees of group homes or LCIs from accepting educational rights.** The state should develop a system of 3rd party representation for children without parents willing or able to participate in the process.
7.	**SELPA directors are not always immediately informed when NPS/LCI students are placed in their districts.**	7.	**When students are placed in SELPAs, the placing agency must inform SELPAs immediately (IDEA '97).** A formal mechanism by which complaints can be made and appropriate remedies enacted is already in place. (eg., under SB 933/98) However, it appears that proper enforcement often does not occur. Existing systems need to be reviewed and bolstered
8.	**It is difficult for SELPAs to obtain records for some NPS and LCI students who move from school to school.**	8.	**Student information should be provided to SELPAs, NPSs, and LCIs by the placing agency immediately after NPS and LCI students arrive in their districts as specified in SB733/98.** The state may wish to consider an electronic database for all students, perhaps through the enhancement of CDE's CASEMIS files or through a separate constructed data system. For any of these systems to substantively alleviate this problem, unique student identifiers will need to be included.
9.	**There is too little emphasis on the transition back to public schools, especially for LCI students.** There is no fiscal incentive to move LCI students back and no administrative funds available to SELPAs to support follow-up of these students.	9.	**In addition to the removal of fiscal incentives for NPS placement, SELPAs should continue to be held directly responsible for all NPS children, i.e.** - SELPAs should be held responsible for ongoing monitoring and determine if student is ready for a less restrictive placement. - SELPAs should be provided with the fiscal resources needed to support these kinds of ongoing monitoring and support activities.

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10.	**Outside agencies sometimes come to IEP meetings with recommendations that call for certain placements and programs that districts may consider more costly and restrictive than is appropriate to meet the educational needs of the child.** Once made, these designations are difficult for SELPAs to override.	10.	**It must be clearly communicated that the criteria used for eligibility of service used by special education, mental health, CCS, probation, etc.** are not the same, nor necessarily should be. For this reason, it is essential that the various agencies refrain from attempting to prescribe services or make recommendations for services to be provided by other agencies.
11.	**At times, the state inappropriately certifies NPSs that are too small or that are unable to meet appropriate facility, curriculum, instruction, or credential requirements.**	11.	**Legislation to provide appropriate standards of size, scope, curriculum, instruction and credential requirements should be enacted.**

II. What impact do mediation and due process hearings have on the use of NPS and NPA?

	Main Issues		Policy Recommendations
1.	As special education is an entitlement, the right to litigate is central to due process rights. **Litigation, however, is costly and adversarial, and should be used as a last resort.** Nationally, and in California, mediation has proven to be an effective alternative to litigation.	1.	**Mediation processes in California should continue to be supported and encouraged as an alternative to litigation.**
2.	**Mediation has also become a high stakes process in California.** While less involved than litigation, mediation can also become quite contentious and difficult for children, parents, and school districts.	2.	**The CDE and districts should continue to develop and implement alternative dispute resolution as a precursor to mediation, e.g. local ombudsperson programs.** The state may also wish to conduct a more thorough review of cases resolved through the due process system. This may lead to an increased understanding of how identification, referral, and placement processes may need to be modified to reduce growing pressures on the state's due process system.

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3. **A number of respondents described the state's due process system as not working well as currently configured.** a. Our interview data suggest that mediators and hearing officers are perceived as lacking certain qualifications considered important. b. Mediators and hearing officers appear to be under-compensated given the magnitude and significance of the decisions they are asked to resolve.	3. **The process through which special education disputes are resolved may need to be restructured.** a. A balanced team including special educators, lawyers, and other representatives may need to be established. The qualifications for mediators and hearing officers should be redefined to align more closely with what districts, parents, and other parties believe are appropriate. b. Compensation for mediators and hearing officers should be reviewed and adjusted to reflect the qualifications required for this position.
4. a. **The services provided as the result of due process decisions are sometimes inconsistent for children with similar needs across the state.** This sometimes results in more restrictive placements than are appropriate. For example, "discrete trial" therapies (e.g., Lovaas) are used to treat some autistic children without any guidelines as to whether it is an appropriate treatment. b. **Districts commonly report that they are reluctant to go to hearings because they fear they will lose.** As a result, they sometimes pay for costly programs they believe are unnecessary, driving up the use of more extensive NPS, NPA, and other services. (However, state data show that overall parents have been somewhat less likely to prevail in due process hearings than districts.)	4. a. Due process decisions should be based on "best practices" in special education. **State guidelines in relation to such "best practices" may be needed.** In the absence of such standards, accepted methodologies and levels of care may vary considerably for each child. b. **The state may wish to review due process decisions in cases where students have been awarded a set of services that are much more extensive than prevailing norms across the state.** What factors of the case led to the award? What are the implications for avoiding the need for future mediation and/or litigation over this issue, and for establishing reasonable service standards that would apply to all children with similar conditions?

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III. How do the costs of public school placements compare to placements in NPS?

Main Issues	Policy Recommendations
1. **The findings from this study suggest that costs per pupil are higher in NPSs in relation to public programs.**	1. **As it appears that for the most part children placed in NPS are systematically different from those served in public schools, more intensive investments of public resources for them may be justified.** Therefor, higher NPS expenditures per student, alone, may not be a source of major public concern.
2. **Appreciable growth in the number and percentage of students served in NPSs in California over the past decade raises concerns.** What factors are driving this increasing number of NPS placements? With increasing expenditures on NPS services statewide, questions arise as to the cost of these services in relation to public schooling options.	2. **AB 602 removes many of the fiscal incentives encouraging the use of NPSs and NPAs. However, this issue is not resolved for NPS/LCI students** as will be discussed in Chapter 5. Several years after AB 602 implementation, if the state is still interested in a more extensive examination of public versus NPS and NPA services and costs, a fairly intensive study designed to provide data representative of the state as a whole and with methodologies for controlling differences in the characteristics of the students served should be conducted. To be successful, it is essential that sufficient time and resources be allocated.
3. **The more pressing problem from the state's perspective may the relative cost-*effectiveness* of these private program options in relation to what the public schools can provide.** While public and private programs will generally be on an equal footing in terms of local placement decisions from a funding perspective under the provisions of AB 602, SELPAs may still be encouraged to use NPSs and NPAs for the wrong reasons if they are held to lower certification, staff eligibility, and monitoring standards than their public counterparts.	3. **The extent to which these types of disparities exist across the public versus NPS service sectors, or within NPSs, requires further study.** However, the disparities in funding, budgeted expenditures, and staffing across the NPS sites included in the sample for this study raise questions about the uniform quality of NPS programs and suggest a the possibility of a greater role for the state in terms of ensuring more uniform standards of quality for NPSs and NPAs across the state.

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IV. How should the state pay for NPS placements for LCI students?

Main Issues	Policy Recommendations
1. **This study question needs to be respecified.** When stated in this way (i.e. linking NPS placements to LCI students) it is reflective of the basic problem underlying the funding of education services for LCI students in California. Because the current funding system *only* focuses on LCI students who are *also* placed in NPSs, it creates a considerable fiscal incentive for linking this residential status (i.e., LCI) for children to a particular type of instructional placement (i.e. NPS).	1. **The question needs to be restated as, "How should the state pay for special education services for LCI students?"**
2. **Under the provisions of AB 602, the magnitude of the incentive to pursue 100 percent NPS funding for LCI students is even greater than before.** It is also exceedingly problematic for the state in that it fails to promote education services for students residing in LCIs that are most appropriate to their individual needs. In this sense, it also promotes inappropriate use of public funds. In addition, the current provisions are undoubtedly not in compliance with federal law as specified in the original provisions of IDEA and as further delineated in IDEA 97.	2. **The state's current system for funding education services for children residing in LCIs must be changed.** We strongly recommend that the additional work that will be needed to reach a more clearly defined set of recommendations regarding educational funding for LCI students be undertaken as soon as possible.
3. **The study committee largely agrees, and AIR concurs, with the general approach to funding LCI students as described in the 1995 report written by the California Legislative Analyst's Office, the Department of Education, and the Department of Finance.** This approach is based on factors beyond SELPA control (i.e. numbers and types of LCI children located within their attendance areas), and is unaffected by factors within their control (i.e. special education identification and placement).	3. **Details, and appropriate data sources, for such an approach still need to be more fully determined.** We recommend the following types of changes as first levels of refinement. 1) Because it is unclear on what basis the weighting factors specified in this approach were derived, it is suggested that an alternative approach to linking differential funding by type of LCI student be developed. 2) Total funding to be made available under these provisions should be based on some estimate of the total cost of providing education to children residing in LCIs.

4.	**The study team for this project did not have sufficient time or resources to fully specify a proposed LCI funding model or to develop adequate data that would be needed for full implementation.** The "Three Agency" team also found this to be a difficult issue and were unable to "calculate LCI allocations due to data limitations" and the "time available"(California Legislative Analyst's Office, Department of Education, and Department of Finance, 1995, p. 68).	4.	**This issue alone needs to be made the primary focus of a state study and/or investigation with sufficient time and resources to produce the data and engage in the deliberations needed for final resolution.**

Overview of remainder of report

This report is organized around the four main questions to be addressed by this study. Chapter 2 addresses the question of how local NPS and NPA placements work, Chapter 3 examines the impact of mediation and the due process system on the use of NPSs and NPAs, and Chapter 4 investigates how the costs of public school placements compare with placements in NPS. Chapter 5 presents findings regarding how the state should pay for NPS placements for LCI students. Each chapter summarizes findings from interviews and analysis of extant data, and provides policy recommendations.

Chapter 2

How do local NPS and NPA placement processes work? What factors affect decisions to use NPSs and NPAs?

Introduction

This chapter explores how nonpublic school (NPS) and nonpublic agency (NPA) placement processes work, and the factors that affect decisions to use NPSs and NPAs. Specifically, the following areas are discussed:

1. Varying district practices for referring, identifying, and assessing pupils, including selection of the individual educational program (IEP) team members, the impact of these practices on the use of NPS/NPA services, and whether some specific practices contribute to higher NPS/NPA costs

2. Whether NPS/NPA placement services are lawful and appropriate, e.g., the extent to which NPS placements are used primarily to address classroom behavior problems rather than a disability condition

3. Why costs are increasing, i.e., increasing numbers of students and/or increasing costs per student

4. Local programs designed to create alternative placements to NPSs, including an examination of the state's current NPS Mainstreaming Pilot Program

5. What other states are doing to contain NPS costs

6. Changes to state law, regulations, practices, compliance provisions, etc. that could reduce the costs of NPSs/NPAs

These questions are examined primarily through interviews conducted with directors of NPSs, NPAs, SELPAs, people knowledgeable of state policy in these areas (including members of our advisory panel), and directors of special education from other states. The chapter is organized into two main sections. The first section focuses on NPSs and the latter on NPAs. Within each section, we start with an overview and then

specifically address the questions stated above. The chapter concludes with a summary of findings, followed by policy recommendations.

Nonpublic Schools

Overview of Nonpublic Schools (NPSs) and Licensed Children's Institutions (LCIs)

According to the *California Education Code 56034: A Composite of Laws* (20th Edition, 1998) a "'nonpublic, nonsectarian school' means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program, employs at least one full-time teacher who holds an appropriate credential authorizing special education services, and is certified by the department."[2] "Licensed children's institution" means a residential facility which is licensed by the state to provide nonmedical care to children, including but not limited to, individuals with exceptional needs. "Licensed children's institution" includes group homes as defined by subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations.[3]

Some NPSs offer both schooling services and residential care through a jointly owned LCI, hence the term NPS/LCI. Day students continue to live at home while attending NPSs. Residential care students are placed in LCIs by a variety of state or local agencies, such as the juvenile courts or the Department of Social Services. The goal for all NPS students is to transition back to public school programs. Ideally, public schools and NPSs work together to transition students back into a public school program when appropriate.

The relationship between NPSs and LCIs is that LCI children may be enrolled in an NPS, rather than a public school. This fact alone does not set them apart from any other student who is found to be in need of special education services and for whom a NPS is determined to be the most suitable placement. However, a major question confronting this study is the extent to which school districts face fiscal incentives to place LCI students in NPS and whether state funding policies should be changed to remove these incentives. Further complications arise when an NPS and LCI have common ownership. If LCI owners or managers urge placement in their own NPS, does this constitute a

[2]CDE 1-8 Part 30. Special Education Programs

[3]CDE 2-6 Part 30. Special Education Programs. Chapter 2. Article 5. 56155.5.

conflict of interest for them and possibly operate against the best interests of the child? In addition to this chapter, these issues are described in Chapters 4 and 5 of this report.

NPS use in California compared with other states

The Eighteenth Annual Report to Congress on the Implementation of The Individuals with Disabilities Education Act (IDEA) provides data on the total number of special education students within each state placed in private facilities. Table 2-1 shows the top 15 states in terms of use of private facilities (last column). For a detailed chart showing all of the states, see Appendix C.

Table 2-1. Number of Children Ages 6-21 Served in Different Educational Environments Under IDEA, Part B and Chapter 1 of ESEA (SOP) During the 1993-94 School Year

RANK	STATE	Total S.E. Students in State	% in Private Separate Facility	% in Private Residential Facility	Total % in Private Facilities
1	NEW JERSEY	171,840	5.35%	0.07%	5.41%
2	OREGON	17,430	3.34%	0.90%	4.24%
3	RHODE ISLAND	20,766	2.60%	1.45%	4.06%
4	CONNECTICUT	63,982	2.48%	1.14%	3.62%
5	MASSACHUSETTS	139,112	3.01%	0.56%	3.57%
6	PENNSYLVANIA	116,781	2.50%	0.48%	2.98%
7	NEW HAMPSHIRE	20,789	1.32%	1.66%	2.97%
8	ILLINOIS	222,944	2.32%	0.33%	2.65%
9	SOUTH DAKOTA	13,389	0.64%	1.91%	2.55%
10	NEW YORK	312,576	2.03%	0.52%	2.55%
11	VERMONT	9,220	0.97%	1.41%	2.38%
12	MARYLAND	85,526	1.63%	0.08%	1.71%
13	CALIFORNIA	481,746	1.24%	0.21%	1.45%
14	MAINE	26,477	0.65%	0.80%	1.44%
15	ARIZONA	62,150	0.93%	0.48%	1.41%

California ranks 13th in the use of private facilities. New Jersey has the highest percentage of students in private facilities (5.35%), followed by Oregon and Rhode Island. To learn more about what drives other state's NPS use, eight of the highest NPS users as well as one state with virtually no students in NPSs were interviewed. Results from these interviews are discussed later in this chapter.

Demographic description of NPS students

Examining the demographic composition of NPSs, compared with all students in special education classes at public schools and overall public school enrollment, clarifies the extent to which certain demographic groups might be under or over represented in NPSs. There are two sources of these data. These are the California Basic Education Data Systems (CBEDS, 1997-98), which provides demographic data on all students enrolled in California public schools, and the California Special Education Management Information System (CASEMIS, 1997), which provides data on the demographics of all special education students, those students attending NPSs, and those attending NPS/LCIs.

Table 2-2. Race/Ethnicity and Gender of Students in California Public Schools, in Public Special Education Programs, NPSs, and NPS/LCIs

Students	White		Hispanic		Black		Asian		Other		Total
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	
All public school	20%	20%	21%	19.5%	4.5%	4.5%	4.5%	4.5%	.5%	.5%	100%
Public special education	14%	29%	12%	25%	5%	9%	1%	2%	1%	2%	100%
NPSs	10%	38%	4%	15%	6%	24%	0%	1%	0%	1%	100%
NPS/LCIs	10%	48%	3%	12%	5%	16%	0%	3%	0%	2%	100%

Table 2-2 compares the race/ethnicity of California public school students, special education students in public schools, NPS students, and NPS/LCI students by gender. It shows a number of interesting differences in the types of students across these varying levels of schooling services. First, there is about twice the proportion of males in special education as females in all minority groups. Second, white, Hispanic, and black males are over represented in special education classes, while females from all race/ethnic groups except blacks are under represented in relation to their overall percentages in public schools. The proportion of black females in special education classes, however, closely approximates their representation in California public schools (4.5% in public schools vs. 5% in special education).

There are also many differences observed between NPSs and special education placements across all racial groups. In all ethnic groups but black, there is a lower proportion of females in NPSs than in public special education classes. For white and black males, the reverse is true. For example, white males comprise 29% of public school special education students compared with 38% of NPS students and black males comprise 9% of public school special education students compared with 24%

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of NPS students. This is not the case for Hispanic males, who represent 25% of the public school special education students and 15% of NPS students.

The comparisons between students in NPSs and all public school students are even more striking for black and white males. For instance, 24% of NPS students are black males, while this group only comprises 4.5% of all public school students. Similarly, 38% of NPS students compared with 20% of all public school students in California are white males. Further, much lower proportions of females from most race/ethnic groups are in NPSs than in public schools. This is not the case for black females, who make up 6% of NPS students and 4.5% of public school students.

Finally, white males comprise the highest percentage of students in NPSs/LCI, followed by black and Hispanic males. While the percentage of white males is higher in NPS/LCIs than in NPSs, there is a smaller percentage of black and Hispanic males in NPS/LCIs than in NPSs. A small proportion of NPS/LCI students are female, although there is a larger proportion of black females in NPS/LCI than in California public schools.

These data raise questions as to whether NPS services are somehow made more available for some groups of students more than others (e.g., through a. better Understanding pof the alternatives and/or due process rights.) The majority of students served in Californian NPS are in the disability category serious emotional disturbance (see Table 1-1). Children generally end up with such a designation because of behaviors and actions that could in some instances result in their being placed in the juvenile justice system. It could be that the groups less likely to be served in NPSs (e.g., Hispanic males) are disproportionately going through the juvenile justice system.

Such concerns appear to be supported by examining the racial composition of children who have been committed to correctional institutions run by the California Youth Authority (CYA). While white children have a higher representation in NPS/LCIs than Hispanic and black children combined (58% v 36%), they constitute less than one-fifth the percentage of Hispanics and blacks in CYA institutions (15% v 76%).

Table 2-3. Race/Ethnicity of Students in California Youth Authority, NPSs, and NPS/LCIs

	White	Hispanic	Black	Asian	Other	Total
California Youth Authority	15%	47%	29%	7%	2%	100%
NPSs	48%	19%	30%	1%	2%	100%
NPS/LCIs	58%	15%	21%	3%	3%	100%

It seems that the very different racial composition of students in NPSs and NPS/LCIs in relation to the student population at large, and that found in CYA institutions across the state, is worthy of further investigation.

Varying district practices in referring, identifying, and placing pupils in NPSs

According to Chapter 4. Article 1. 56300 of the Education Code, Part 30:

> Each district, special education local plan area, or county office shall actively and systematically seek out all individuals with exceptional needs, ages 0 through 21 years, including children not enrolled in public school programs, who reside in the district or are under the jurisdiction of a special education local plan area of a county office.

In other words, school districts are responsible for identifying all special education students within their boundaries. When a student is thought to need specialized services, a meeting involving the parent(s), teacher, school district and/or a SELPA representative, is convened. The primary purpose of this meeting is to determine whether the child is eligible for special education, and if yes, to discuss the individual education program (IEP), most appropriate for the child with exceptional needs. The assessment team is sometimes extended to include representatives from a variety of public agencies, such as the local departments of mental health and social services. At these meetings, the parties determine the type of specialized services the student needs.

IEP assessments can become extremely complicated. For example, the state policy and SELPA interviews (as well as numerous studies on this topic[4]) suggest that even for disabilities of a more medical nature (eg., visual or

[4]For example, see Singer, Palfrey, Butler & Walker (1989)

hearing impairment), subjectivity and variability exist in the practice of assessing students for special education, which is problematic for referral, identification, and placement. Further ambiguity regarding category of disability, appropriate services, and who will provide them, may be created for students receiving services across agencies. For example, problems sometimes arise because the County Departments of Mental Health and school districts use different definitions for SED.

In addition, study respondents reported that other complications arose from the multiple involvement of various agencies in the IEP meetings. The roles and responsibilities of these agencies are sometimes unclear. Agencies may disagree as to who is responsible for providing services. Problems of this nature resulted in the addition of Chapter 26.5, Division 7, Title 1 (one time referred to as AB 3632) to the California Education Code. This act addresses the issue of interagency responsibilities for providing services to children with disabilities. The intent of this act is to better serve the educational needs of the state's children with disabilities by clarifying specific state and local interagency responsibilities. Despite the enactment of this law, ambiguity regarding responsibilities and appropriate levels of involvement of the CDE and the Department of Health and Welfare still exist when discussing children in special education. Currently, final regulations under Chapter 26.5 are being discussed. These regulations will hopefully provide a clearer delineation of these responsibilities across agencies.

NPS is one possible placement option that can emerge from the IEP process. Once it is decided that a student needs to attend an NPS, the fiscal responsibility for tuition and other costs associated with placement must be determined. This primarily depends on who makes the placement and where the student resides. Table 2-4 illustrates the funding responsibilities of districts and agencies involved in placing a student in an NPS through the IEP process. This table covers NPS services provided pursuant to an IEP. Non-IEP placements are the responsibility of the placing agency or the child's parents. Although the chart does not account for all of the situations that can complicate funding, it provides a general framework for how fiscal responsibilities are divided. Column one describes three situations under which a student can be placed in NPSs. The remaining columns show who is responsible for payment in these different situations.

Table 2-4. Responsibility for Funding NPS Services Authorized in an IEP

Situation	Tuition before AB 602	Tuition after AB602	IEP Assessment after AB 602	Transportation after AB 602	Residential after AB 602
1. Child lives with parents	Home district 30%, State 70%	Home District	Home District	Home District	N/A
2. Child placed in foster home or LCI by home district	Home district 30%, State 70%	Home District	Home District	Home District	Home District
3. Child placed in foster home or LCI by a non-educational agency					
3.1 In home district - parents have educational rights	Home district 30%, State 70%	Home District	Home District	Home District	Non-Educ. Agency
3.2 In home district - parents do not have educational rights	State 100%	State 100%	Home District	Home District	Non-Educ. Agency
3.3 Outside of home district	State 100%	State 100%	District of LCI	District of LCI	Non-Educ. Agency

Note: The home district in this chart refers to the school district where the parents and/or student reside.

The first scenario describes a student who lives at home with his/her parents and attends an NPS. Prior to AB 602, the tuition would have been paid for by the home district, which would then receive a 70% reimbursement for this tuition by the state. After AB 602, however, the home district is expected to pay the full tuition without additional state reimbursement. Each SELPA's block grant includes an amount based on the reimbursements received in the year prior to AB 602 implementation.

In the second situation, the student is placed in a foster home or LCI by the home district. Since the home district placed the student, they are responsible for all placement costs, including the residential component. Like the first situation, prior to AB 602, the district received a 70% reimbursement for this placement. After AB 602, this funding will come from each district's block grant.

In the third situation, the student is placed in a foster home or LCI by a non-educational agency, which includes courts, juvenile probation, social services,

or regional centers. In this case, residential costs are covered by the placing agency. This situation can vary depending on who has educational rights for the student, as depicted above in scenarios 3.1, 3.2, and 3.3. As seen in situation 3.1, if a student is placed in an NPS in the home district and the parents maintain educational rights, tuition, IEP assessment, and transportation costs are the responsibility of the home district. If a student is placed in an NPS in the home district and the parents do not have educational rights (situation 3.2), the state will reimburse the home district 100% of the tuition cost. The cost of the IEP assessment and transportation will be the sole responsibility of the home district. In situation 3.3, the student lives in a foster home or LCI and attends an NPS that is outside of the home district. At this point, the state will reimburse the district 100% of the tuition cost. The IEP assessment and transportation costs are the responsibility of the resident district (where the foster home or LCI is located).

In all of these last three situations, the placing agency is responsible for tuition, and the school districts are responsible for the IEP assessments and transportation costs. There are other, less common situations that are not represented in this chart. For example, sometimes students are enrolled in NPSs by their parents outside of the IEP process (unilateral placements). When this happens, parents are responsible for the tuition, unless they are able to receive retroactive reimbursement from the district through the due process system. Lastly, there are "stay put" placements which refer to children whose placement has not yet been finalized. Until their placements are finalized, they may remain in the NPS in which they currently are being served. Under "stay put" provisions, the costs are funded by the originating agency.

Interview findings regarding the NPS placement process

From our interviews with 12 individuals chosen for their statewide California perspective[5], administrators from 9 other states[6], 8 SELPAs, 8 NPSs, 7 NPS/LCIs, and 8 NPAs, we were able to produce a synopsis of what are perceived as major issues affecting the use and management of NPSs. This summary of issues was presented to our Advisory Committee (AC), who offered suggestions for refinement. Adjustments and modifications were made

[5] The state policy makers consist of selected SELPA and NPS directors, CDE and CDF consultants, Special Education Hearing Office representatives, and other suggested contacts.

[6] Interviews were conducted with state administrators from 8 of the states shown in Table 2-1 (New Jersey, Oregon, Connecticut, Massachusetts, New Hampshire, Illinois, South Dakota and New York) as well as from Ohio, which is a low NPS use state.

accordingly. The following section presents the major issues regarding NPS use and governance that reflect the opinions of both the AC and the interview respondents.

There was general concern among the majority of SELPA respondents that NPS placements were overused. When this issue was discussed with the AC, concerns were also expressed that special education may be considered the path of least resistance for certain students (e.g. SED) in relation to the other alternatives they may face (e.g., the criminal justice system, social services, CCS, mental health, or expulsion from school). Only special education provides a clear entitlement for the student, timelines that are rigorously enforced, full public funding, and procedural guarantees. These features may be placing increasing pressure on the state's special education system in relation to other public sector alternatives.

The majority of all respondents interviewed believed that the referral and placement process is further complicated by funding issues. These interviews revealed that many people are confused by the funding structure within special education and across agencies. For example, our interviews with SELPA directors suggest that outside agencies sometimes come to IEP meetings with recommendations regarding placements and programs that districts may consider more costly and restrictive than are appropriate to meet the student's educational needs. Once made, these designations are difficult for SELPAs to override.

Further, there was a clear consensus that other costs are overlooked and unaccounted for in the current funding model. These costs include IEP assessments, transportation, and residential costs. After AB 602, all three of these costs will continue to be incurred by the school district, without supplemental support from the state except for what is provided in the block grant.

One concern, raised in our AC meetings and supported by the NPS and SELPA interviews, is that group homes and LCIs sometimes accepting educational rights from parents. This may occur for various reasons. For example, while the LEA is the organization designated to appoint surrogate parents for students, they may fail in their attempts to find appropriate parents for students or provide them with needed training. Other placing agencies solicit parents' approval to designate a group home or an LCI operation as the representative of their child's educational rights. Regardless, however, when this puts them in a position to advocate for placement in their own facility, this may result in a conflict of interest regarding the most appropriate placement for the student.

Although the provisions against this appear to be clear in state and federal law, it continues to be reported as an ongoing problem.

Another concern is that SELPAs are not always informed in a timely manner, or at all, when NPS/LCI students are placed in their districts. When this occurs, local districts are placed in a difficult position. IDEA '97 requires that when students are placed in SELPAs, the placing agency must inform SELPAs immediately. The state does have a formal mechanism by which complaints can be made and remedies enacted. However, it appears that this mechanism does not always serve its intended purpose and therefore, the problem persists despite existing regulations. SB 933 (Chapter 311/98, Thompson), which was recently passed, contains provisions which attempt to address these issues.

Some SELPA directors discussed another issue that hinders the placement process. This is the difficulty that some SELPAs have in obtaining records for some NPSs and LCI students who move from school to school. It is common for some students to have multiple residential transfers within relatively short time frames, which makes it difficult to monitor student progress. When SELPAs "inherit" these students with no record of their previous academic and disciplinary history, it is difficult to serve these students most appropriately.

Perceived strengths and weaknesses of NPSs

In this section, results from our interviews regarding the perceived strengths and weakness of NPSs are presented. Interview protocols for the difference types of respondents are found in Appendix.

The AC and almost everyone interviewed believed that there is a place for NPSs along the education continuum. Respondents cited a number of reasons why they considered NPSs to be necessary. First, NPSs are believed to provide the expertise to serve students that the public schools believe they can not manage. Second, they are believed to offer specialized services and intensive programming that may not be available in public schools. Of the seven SELPA directors interviewed, five commented on the specialized services that NPSs offer. These services were not necessarily available within the local district. Nine of the thirteen NPS directors interviewed identified "intensive programs" as advantages of their organizations. The small teacher to student ratio and occasional individualized services provided at NPSs were viewed as extremely advantageous, as this type of individualized attention generally is not provided in the public schools.

Interview findings also suggest that NPSs offer an environment that requires family involvement. Families are asked, encouraged, and sometimes required to get involved with the NPS and/or LCI. For example, on an NPS site visit, we learned that family members sometimes attend counseling sessions with students. Encouraging this type of family involvement can foster stronger relationships among family members, students, and staff. The student mentioned in this example was able to return home while continuing to attend the NPS, and later returned to the public school. In this context, the family was able to help the child deal with the emotional issues that affected the child's behavior in school.

Another key advantage of NPSs cited by 6 of the 14 state policy respondents, is that students considered to be a threat to themselves and others can be removed from the public school setting. Some students have been placed at these locations by the county probation office or the courts, and according to state policy respondents, most believe that these students can pose a threat to public school students. To prevent dangerous situations, these students are directed to the NPSs, where closer supervision and regular counseling can occur.

Some weaknesses associated with NPSs were also noted. For instance, four of the SELPA directors were concerned about the quality of service within some NPSs. SELPA and NPS directors suggested that the state sometimes certifies NPSs that are too small or unable to meet appropriate requirements. Our discussions with the CDE indicate that the certification process focuses more on the basic facility guidelines and access to the four curriculum standards that are required by law, and do not necessarily consider factors related to program quality. Thus, it appears that the requirements for CDE certification are not consistent with those that some SELPA and NPS directors believe to be most important for overall quality control. However, it was also pointed out that all NPS must assure the use of appropriately qualified staff and that this must be monitored and updated each year.

A few SELPA respondents and AC members expressed the belief that group homes may sometimes develop NPS programs primarily for financial reasons. While residential rates are firmly fixed, they argue that there is more latitude in the negotiation of NPS rates. They question whether some LCIs may be also establishing NPSs to gain financial leveraging. When there is a shortage of LCI placements, some LCIs with on-site NPSs may be able to create pressure to have their residents served in their own NPSs. Although the SELPA directors may not feel that the NPS offers an appropriate program, they sometimes reluctantly place the child in the school in order to secure a residential placement for the child.

In response, NPS/LCIs describe the advantages of the more holistic approach they can provide for some students. In some instances, placing agencies required the coupling of day and residential services.

Another concern regarding NPSs voiced by half of the SELPAs, a third of the NPSs, and half of the state policy respondents is the isolation associated with being in a more restrictive environment. Because NPSs generally serve only special education students, they tend to provide less opportunity for interaction with non-special education students.

Finally, two of the state policy respondents were also concerned that there was a lack of emphasis in many NPSs on transitioning students from NPSs back to public schools. This problem may be especially salient for LCI students, for whom SELPAs face a substantial financial incentive to retain in NPSs. Without proper transition programs or monitoring, students can potentially remain longer in NPSs than is necessary. This problem is said to exist in large part due to a lack of administrative funds available to SELPAs to support monitoring of these students. Three of the SELPA directors specifically mentioned the lack of monitoring as a disadvantage associated with the NPS system. However, nine of the NPS directors said that they had a transition program of some form in place. Further, there is no fiscal incentive to move LCI students back to the public school. Problems of fiscal disincentives associated with NPS/LCIs are further discussed in Chapter 5.

Lawfulness and appropriateness of NPS placements

A requirement of the study was to provide "an assessment of whether NPS placement services are lawful and appropriate. Specifically, to what extent are NPS placements used primarily to address classroom behavior problems rather than a disabling condition?" To address this issue, one of the questions posed to respondents was: "From your perspective, are there instances in which an NPSs placement might be considered unlawful or inappropriate?" While the majority of respondents reported knowing of inappropriate placements, very few said they were aware of unlawful placements. Reasons cited for inappropriate placements included lack of a more appropriate facility to meet the student's needs, pressure by parents and other agencies, and fiscal incentives.

Relating to lack of appropriate facilities, two types of inappropriate NPS placements were most often cited. First, although some NPSs do not have all the personnel and equipment needed to provide some children with necessary services, some of the public schools report that they continue to send children

to these locations for lack of a better alternative. The second type of inappropriate placement that was described is when a public school has not well equipped itself to handle students with more serious behavior problems. The only alternative perceived to be available is to send the child to an NPS. In such instances, students with behavior problems may be inaccurately labeled as special education. Over time, this label may be reinforced and difficult to change.

It was also cited that parents sometimes argue for NPS placements for their children that are inappropriate. Some parents perceive NPSs as offering better services than public schools in regard to their child's special needs. In response, school districts may attempt to convince parents, when appropriate, that their programs are comparable or better than private school programs for this child. When parents are unwillingly to accept this position, however, they may initiate mediation and due process hearings. The school districts, in an effort to avoid hearings, may concede to the parents desire to send the child to an NPS. If the school district is trying to satisfy the parents and avoid the hearing rather than best addressing the child's needs, this may lead to an inappropriate NPS placement for the child. These issues are further discussed in Chapter 3.

A third reason for inappropriate placements in an NPS concerns fiscal incentives. If a child resides in an LCI, the state will reimburse the school district for the full educational cost of that child if he or she attends an NPS, but no additional support if retained in a public school. Although the school district may be able to provide appropriate services for the child, it is fiscally disadvantageous to serve the child locally. This issue is discussed further in Chapter 5.

A concern was also cited regarding funding received by foster care parents. If a foster care child is found to need special education services, foster parents may be entitled to extra funds to raise that child through a specialized care rate. As a result, this may create a fiscal incentive for foster care parents to have the children diagnosed as needing special education services and may result in foster parents pressuring the public schools to make such a designation. County and state representatives interviewed regarding this issue argued that their specialized care rate and foster care systems are stringent enough to prevent inappropriate placements of children due to these types of funding provisions. On the other hand, these provisions seem to vary considerably from county to county and were reported to be problematic in some instances.

Analysis of increasing costs

Based on the J-50 report from the California Department of Education, NPS expenditures statewide have been increasing, but not on a per student basis. Table 2-5 shows NPS expenditures from1983 through 1998.

Table 2-5. Actual and Adjusted NPS Expenditures from 1983-4 through 1997-98

Year	Total Expenditure	Adjusted Total Expenditure (1997-98 dollars)	ADA Total	Expenditure per ADA ($)	Adjusted Expenditure per ADA (1997-98 dollars)
1997-98	$279,344,356	$279,344,356	12,799	$21,826	$21,826
1996-97	259,969,854	265,910,806	12,449	20,882	21,359
1995-96	236,120,521	247,598,602	11,668	20,236	21,220
1994-95	214,202,741	229,716,683	10,924	19,609	21,029
1993-94	200,543,198	220,224,094	10,265	19,536	21,454
1992-93	183,483,820	206,948,303	9,493	19,327	21,799
1991-92	174,272,430	203,231,559	8,876	19,634	22,896
1990-91	150,702,160	183,548,873	8,097	18,612	22,669
1989-90	120,408,379	153,013,182	7,122	16,906	21,484
1988-89	100,332,643	133,063,493	6,087	16,484	21,861
1987-88	82,904,476	113,919,040	5,306	15,624	21,469
1986-87	69,951,052	98,736,251	4,880	14,333	20,232
1985-86	58,423,236	84,933,737	4,318	13,529	19,668
1984-85	49,456,313	74,474,433	3,890	12,712	19,143
1983-84	45,650,910	71,477,798	3,859	11,828	18,520

Note: Expenditure adjustments are based on index from Digest of Education Statistics, 1996

The second and fifth columns show total NPS expenditures and expenditure per student in average daily attendance (ADA). Columns three and six show expenditures with an inflation adjustment to facilitate comparisons over time.

Table 2-5 shows total expenditures for NPSs steadily increasing over time in adjusted as well as actual terms. However, expenditures per ADA adjusted for inflation have held steady over the past ten years. To help understand reasons for this, respondents were asked: "Costs are reported to be increasing for NPS/NPA services. Do you find this to be true? If yes, what appears to be driving this?" Cost issues discussed by respondents regarding NPS services differed greatly from those regarding NPA, which are discussed in the next section.

Our interviews and the data above show that a main reason for overall increased expenditures of NPS is the growth of NPS student enrollments. Table 2-6 illustrates the increased enrollment of NPS and special education students over the past ten years.

Table 2-6. Nonpublic School Statewide Enrollment on April 1, 1988-1997

Year	Number of Students in NPSs	% of Total Special Education Students in NPSs	Total # of Special Education Students	% of Total Enrollment in NPSs	Total Student Enrollment
1997	11,273	1.85	610,540	.19	proj. 5,847,000
1996	10,836	1.82	594,279	.19	proj. 5,705,000
1995	10,142	1.77	572,273	.18	est. 5,536,000
1994	9,718	1.76	553,176	.18	5,407,043
1993	8,872	1.64	540,472	.17	5,327,231
1992	8,269	1.59	521,615	.16	5,254,844
1991	7,669	1.54	497,071	.15	5,107,145
1990	6,765	1.43	472,586	.14	4,950,474
1989	6,034	1.33	453,000	.13	4,771,978
1988	5,194	1.20	432,588	.11	4,618,120

Note: The first 4 columns of information are from the April 1997, Special Education State-wide Enrollment Reports compiled from student level data submitted by programs operated by SELPAs and State Operated Programs for the Disabled. The sixth column of information was derived from *Projections of Education Statistics to 2008* and *Digest of Education Statistics 1996*. For years 1988-1994, information was taken from *Digest of Education Statistics 1996*. The last three years of total student enrollment data came from *Projections of Education Statistics to 2008*.

Table 2-6 shows that the number of students served in NPSs has more than doubled over the past ten years. There has also been a steady and persistent increase in these numbers as a percentage of special education students and as a percentage of the all student population. It should be noted that most

respondents from all groups stated that the increase in NPS tuitions have been minimal and generally have been based on annual cost of living adjustments (COLA). Our interviews with SELPA and NPS directors indicate that generally school districts and NPSs develop a contract that sets a tuition rate for the school year. They try to predict the number of students the district will send to their school throughout the year. The tuition reflects this predicted number, taking into account the number of teachers, aides, and other staff that need to be hired. NPSs who have contracted with districts cannot raise tuition costs during the year because of this annual rate. In most instances, NPSs, as well as school districts, feel they do not have much control over the rate that is set. These districts usually have a long standing relationship with the NPSs. Each year, the districts can only pay for a COLA increase given their budgets. The NPSs, realizing that the school districts lack the financial means for a greater increase, settle for this.

Programs to avoid placement or limit the time spent in NPSs

Since all students with disabilities should be served in the least restrictive environment possible, it is important that efforts be made to limit the time spent in NPSs, and that programs to help NPS students transition back into the public school be in place. Interviews with NPS directors indicated that they believe they offer well-defined programs that limit the time students spend in NPSs. Most NPSs try to return students to a public school within two years. To help facilitate this, some schools have transition programs such as dual enrollment, wrap around services, or aides to accompany students to the public school until they are comfortable enough to do so independently. Dual enrollment allows a student to attend both an NPS and a public school at the same time. A child may begin by attending a public school for a third of the day while spending the rest of the day in the NPS. The student eventually fully transitions from the NPS into the public school. Wrap around services allow students to continue receiving certain services from the NPS while attending a public school. For example, while a child may have transitioned out of an NPS, he/she may continue with counseling while attending a new public school. The counselor helps to transition the child into his/her new home and school setting.

There are also various programs designed to create alternative placements to NPSs. These programs include county community schools, Mainstreaming Pilot Programs initiated and funded by the state, and other public school programs to serve students who might otherwise end up in an NPS.

Community schools

State policy, SELPA, and NPS respondents mentioned county community schools as a possible alternative to NPS placement. Some counties and districts have established community schools that cater to children who have been expelled, are referred by probation, or are homeless.

Two types of community schools provide services to children who do not attend a public school. One type of community school caters to children on probation or expulsion, who are more likely to have behavior problems. Children who are homeless are placed in a different type of community school. If the child needs special education services, the child will go through the IEP process and receive the appropriate services within the community school or possibly at an NPS.

There is also the possibility that a student has been expelled from the local school district and lacks a school to attend. When a special education child has committed an expellable act, it is the responsibility of the district to have an IEP meeting for the child. If it is determined that the child's act was associated with a disability, the child can not be expelled. As a result, if the child has both a behavior problem and a special education disability, the child may be placed in a NPS or a community school.

In this situation, the community school is responsible for providing special education services to the child. In such instances, these community schools would clearly have to offer special education programs with appropriately trained staff. These would need to be in place before the relocation of any children from NPSs. Concerns were expressed that many of these community schools do not currently have appropriate special education programs in place.

Mainstreaming pilot program

Another alternative to NPSs that was discussed in the interviews was the mainstreaming pilot program. Largely due to the increased costs associated with the growing population of students who attend NPSs, pilot programs that serve as a public alternative to NPSs have been developed. Under Chapter 325, statutes of 1991 (AB 1134, Campbell) in 1991, the California Legislature authorized a pilot project to determine if new public school programs could provide an "effective mainstreaming

education program…at a public cost no greater than that incurred in the nonpublic nonsectarian school setting…" (Chapter 325, Statutes of 1991). Ten school districts and county offices of education were selected to receive a grant based on the average NPS cost within the SELPA and the number of student spaces allocated to each site. In the Special Education Nonpublic School Mainstreaming Pilot Program Evaluation Report to the Legislature, pilot programs were described in the following way:

> The programs at each site are unique; they were designed locally reflecting local resources and needs. Some projects conduct classes on a given site, while others provide teams of specialists who travel to several schools their pilot project students are attending. Some local projects serve high school age students for whom they provide strong vocational training; some serve preschoolers to participants approaching age 22.

The purpose of pilot programs is to cater to the needs of students that would have otherwise been sent to NPSs, although the pilot programs generally focus on students with less severe disabilities. Some students may still be sent or returned to an NPS if they are determined to continue to require more intense services or specialized care that can not be provided by the local school district.

Interview findings regarding programs to avoid placement or limit the time spent in NPSs

In addressing the RFP request to examine "the success of local programs designed to create alternative placements to NPSs, with an examination of the state's current NPS Mainstreaming Pilot Program," we specifically asked the following question: "Do you have or know of alternatives to NPS placements?"

Responses to the pilot programs were varied. Five state policy and four SELPA respondents specifically discussed the pilot programs as options to NPSs. Respondents believed that some of the programs were highly effective, while others were perceived as taking advantage of the funds that were given to them. Some of these programs purportedly did not use the funding to create new programs, using the money instead to slightly modify existing programs.

The programs that were located at an offsite area seemed to be regarded most favorably. These programs are very similar to NPSs. These programs provide smaller teacher to student ratios and offer specialized programs to address the needs of their students. As described earlier, the main difference of this program from a NPS is its focus. Although there are counselors and social workers, these programs maintain a more academic environment and are purportedly not as focused on behavior as NPSs. On occasion, pilot programs can not handle some difficult students, who are then sent to an NPS.

As discussed in the Advisory Committee meetings and supported by our interviews, there is consensus that students are often placed into NPSs because they have behavior problems that public schools believe they can not address. Community schools and the pilot programs appear to offer viable alternatives for some students with behavior problems who would otherwise be placed in an NPS.

Some of the SELPAs offered other suggestions as possible alternatives to NPSs. For example, a couple of the SELPA directors supported the concept of creating a public school on the site of a LCI. The Boys Republic in southern California is this type of program. Additionally, some SELPA directors suggested that district teachers be sent to work on an NPS site. This encourages better relationships with NPSs and helps ease the transition process for students. Some other SELPA directors, however, reported that their local NPSs were not amenable to such arrangements. From the state's perspective, it would seem wise to pursue policies to encourage such collaborative arrangements between LEAs and NPSs.

How do other states pay for NPSs and contain NPS costs?

To address the NPS cost issues faced by other states, the following question was asked of directors of special education from other states: "How does your state pay for private special education school placements?" Additionally, these state directors were asked if their costs for NPSs and NPAs were increasing, and if they were developing any public alternatives to private school placements.

Our interview responses suggest that districts in other states are generally responsible for tuition and the placing agency, if other than the district, and/or the state is generally responsible for residential costs. However, fiscal

incentives are perceived as a problem when state funding is higher for NPSs than for public programs. One state tried to pass a neutral funding policy that was rejected, primarily by parents who argued that higher NPS funding was needed to serve severe students. Additionally, districts in other states are also upset about having to pay for NPS placements made by other agencies. This problem can be compounded by untimely notification to districts of their placements.

Further, almost all (seven out of eight) high NPS use states reported that their costs for NPSs were increasing. Six of the eight high NPS use states reported developing public alternatives to NPSs. These programs included transitioning students from NPSs to public schools, building the capacity to serve students who would otherwise attend NPSs, and community based programs, such as after school programs, aimed at helping kids with certain types of disabilities.

Expected use of NPSs given AB 602

In the course of the next couple of years, most respondents from all interviewed groups expect to see an initial decline in the use of NPSs once AB 602 is enacted. Since districts generally will have to deduct NPS tuition from their block grants, there will be an incentive to try and duplicate NPS programs on a public campus. This will be especially applicable to districts that feel they can provide the same services as an NPS for a lower cost. Although a number of public schools are expected to attempt to duplicate NPS programs, NPS respondents think that they will not find this as easy as they expect. As a result, they expect NPS use to resume to its current level over time. Some NPSs, however, are supportive of the idea of districts replicating their programs. Because some NPSs are currently overburdened, similar public programs will alleviate the increasing number of students sent to NPSs.

Nonpublic Agencies

Overview of Nonpublic Agencies (NPAs)

A "'nonpublic, nonsectarian agency' is defined as a private, nonsectarian establishment or individual that provides related services necessary for an individual with exceptional needs to benefit educationally from the pupils' educational program pursuant to an individualized education program and that

is certified by the department."[7] NPAs can consist of one or multiple service providers that are contracted by districts and NPSs.

Prior to AB 602, the state reimbursed districts that used certified NPA services for 70% of their expenses. Under these conditions, it was often less expensive for districts to contract for their services rather than attempt to hire these support service staff. As discovered in the SELPA interviews, this led many districts to encourage therapists and aides to apply for NPA status through a certification process similar to the one used for NPSs. Because the state reimbursed 70% of NPA costs, districts could afford to contract with NPA therapists at competitive market prices, which were generally higher than the teacher salaries they would otherwise receive. The cost of these services tends to be high because of an increasing demand for therapy through IEP and other processes coupled with a state and national shortage of therapists.

Referring and identifying pupils that need NPA services

A formal IEP process needs to occur for a student to receive specialized services through a NPA. During this process, the involved parties discuss what services they believe the student needs. Some of these may be provided through an NPA. NPA services include, but are not limited to, language and speech therapy, occupational therapy, physical therapy, vision services, nursing services, interpreter services, assistive services, braille transcription, and deaf/hard of hearing services.

One main concern to emerge from our interviews regarding NPAs was the issue of appropriate services. There appears to be considerable ambiguity, statewide, as to when certain types of therapies are needed, and how much is enough. A specific example concerned treatment for autistic children. Increasing numbers of parents have been seeking Discrete Trial Training (DTT) for children with autism. The DTT program requires intensive one on one intervention for extensive periods of time each day. Do students with autism really need such a high cost and intensive program? If yes, should all autistic children receive such therapies or only those with certain characteristics? If there is a continuum of service needs for autistic children, then who and, based on what selection criteria, should receive DTT? Currently, there are no state guidelines regarding appropriate treatments for autism. Some parents believe that DTT is the best treatment for their children. However, it is an extremely costly treatment. Although there are other less

[7] CDE 2-6 Part 30. Special Education Programs. Chapter 2. Article 5. 56155.5.

costly programs for autistic children, some SELPAs believe that many parents are unwillingly to consider these alternatives.

Interviews indicate that SELPA directors do not necessarily believe that DTT is the best treatment for autistic children. They would like to try other treatments that have proven to be as effective, but feel discouraged, as these alternatives have generally been found unacceptable when challenged through due process. When SELPAs confront the threat of legal action, they may refrain from challenging parents with what they believe is best for the child. SELPA directors believe that they stand a slim chance of prevailing in a hearing when it comes to the issue of DTT. As discussed by one SELPA director, the cost of going to a hearing would be comparable to paying for the services that the parents want.

A major problem remaining after AB 602 regarding NPA use pertains to growing demands for therapeutic services, e.g. physical, occupational, and discrete trial therapies. In the absence of state standards regarding accepted methodologies and appropriate levels of service, these issues are being decided through due process on a case by case basis. Without any guidelines, considerable pressure on the state's due process system is likely to continue.

Analysis of increasing costs

One of the questions posed to respondents was: "Costs are reported to be increasing for NPS/NPA services. Do you find this to be true? If yes, what appears to be driving this?" Similar to our findings for NPSs, almost all respondents from the four groups considered NPA services offered by NPAs to be an important component of the state's continuum of special education services. Districts generally contract with NPAs for services they cannot provide themselves. Reasons for this include NPAs' specialized nature, and supply and demand issues that make it difficult to hire such specialists as physical therapists within the district's current salary structure. In the past, the state's funding structure for NPAs also have often made it less costly, from the local perspective, to contract rather than hire. Even if the overall cost is higher, the state would pay 70% of NPA costs. The provisions of AB 602, however, which remove many of the incentives that some districts currently have to use NPAs, are likely to mitigate some of the concerns about the growing use of these services. As a result of AB 602, patterns of use may change fairly substantially over the next few years.

Small districts often use NPAs because they do not have enough students who need the same services within their district. It is more cost effective to contract

with a therapist for a limited number of hours than it is to hire him/her as a full time employee with benefits.

Expected use of NPAs given AB 602

After AB 602 goes into effect, districts may be less likely be less willing to contract with NPAs given that they will no longer receive a 70% reimbursement. The money to pay for these services now must come out of their block grants. From the SELPA interviews, we found that SELPAs and districts are attempting to hire current NPA staff into full time positions with the intent of lowering costs. Some see this as a long term financial investment preferable to the sporadic hiring of NPAs. One initial concern is that they may not be able to offer competitive salaries. The services offered by NPAs are in high demand. Although, districts believe that they will eventually be able to hire the staff they need, their primary concerns are for the initial years after AB 602. Without additional financial assistance from the state, districts can only offer reduced salaries in relation to their formerly contracted positions. Other schools have started sending their teachers to professional development classes to learn the skills to work with special education children with less severe disabilities. One district has hired a therapist, to not only serve the children, but to provide professional development to the teachers. It appears that districts are developing creative strategies to lower the cost of hiring individuals who would have previously been contracted through NPAs.

Summary

A major requirement of this study was to discuss how NPS and NPA placements work, and the factors that affect decisions to use NPSs and NPAs. Our findings indicate that this is a complicated process that sometimes causes confusion among SELPA and NPS directors.

We began this chapter by discussing the issues affecting NPSs. Referral, identification, and assessment processes potentially involve many people leading to different diagnoses and varied opinions of needed services. The process is further complicated by funding issues. It is perceived that NPSs, at times, have been overused. These concerns should at least partly be ameliorated, however, by AB 602. Other concerns with this process included the solicitation of educational rights by group homes, the difficulty in obtaining records of students, and informing SELPAs of the arrival of new students into their districts.

Although very few instances were cited in which an NPS placement was found unlawful, the appropriateness of many placements was called into question. However, a majority of respondents said they believe that NPSs are needed within the education continuum.

We found total costs to be increasing in terms of actual and inflation adjusted dollars. However, this overall rise in cost was due entirely to the growth of NPS enrollments. NPS costs per student have held steady in inflation adjusted terms over the past ten years. A more detailed discussion of NPS costs in relation to public school costs is provided in Chapter 4 of this report.

Next, we examined the success of local programs that serve as alternatives to NPSs. We found that community schools and the mainstreaming pilot programs were viewed favorably among most of our respondents.

Other states interviewed also report increased NPS costs. Further, the majority of states also reported developing public alternatives to NPSs.

The second major section of this chapter focused on NPAs. The lack of standards of care for appropriate services was identified as the most salient issue. Specifically, respondents frequently cited DTT for autistic children as a service that is very costly and which is not supported by scientific evidence suggesting it is superior to other treatments. In the absence of additional guidance as to the appropriateness of the treatment, DTT services are sometimes awarded on a costly case by case basis through due process proceedings.

Some respondents perceived NPA services to be costly and at times unnecessary. As with NPSs, issues associated with expanded use should be at least partly addressed through the implementation of AB 602.

Policy recommendations

In conjunction with the advisory committee for this project, specific policy recommendations were developed to address the main issues that emerged from this study regarding the NPS and NPA placement processes.

First, almost everyone interviewed considered NPSs and NPAs to be important components of the state's continuum of special education services. The provisions of AB 602, which remove many of the incentives that some districts currently have to use NPSs or NPAs, are likely to mitigate some of the concerns about the growing use of these services. In response to AB 602, patterns of use may substantially change

over the next few years. The state may wish to monitor these developments and the state's student date file, CASEMIS, is potentially a valuable source of information. However, as currently configured, CASEMIS lacks consistent coding conventions for NPSs. CDE should consider remedying this so students served by NPSs can be tracked to specific schools using their NPS codes.

Second, there are growing concerns regarding possible conflicts of interests inherent to the current NPS/LCI placement and funding systems. Given the limited time frame, funding, and breadth of this study, it does not include an in depth evaluation of these possible conflicts of interest. It is our recommendation that further study in this area is needed.

Third, with AB 602 in place, the fiscal incentive to place students residing in LCIs into NPSs becomes even more pronounced. All fiscal incentives to identify certain types of LCI students as needing special education and for placing them in NPSs should be removed. These recommendations are described in more detail in Chapter 5 of this report.

Fourth, a major problem regarding NPAs concerns the growing demand for therapeutic services. In the absence of state standards regarding accepted methodologies and appropriate levels of service, these issues are often decided through due process proceedings, or an implied or actual threat of same. Over reliance on this litigative approach is costly, appears inefficient, and is likely to lead to inequities in service provision across the state. There may be a need for state involvement in establishing standards of service.

Fifth, there are growing concerns that special education is increasingly considered the path of least resistance to services in relation to other alternatives for certain students. Only special education provides a clear entitlement for the child, including due process rights and an individualized education program. Clearer lines of responsibility need to be drawn across state agencies for students with special needs. The data shown in Table 2-2 show substantial disparities in the racial composition of students served in NPSs and NPS/LCIs in relation the population at large and those served in CYA institutions. These issues seem worthy of further investigation.

Sixth, it was reported that pressure is sometimes created by some LCIs to place students in NPSs owned by the same organization that runs the LCI. Provisions should be developed and enforced to clearly separate decisions regarding the most appropriate residential placement from the most appropriate educational placement for LCI students.

Seventh, it was reported that group homes and LCIs sometimes solicit/accept educational rights from parents, which may result in a conflict of interest regarding the most appropriate placement of the child. We recommend that employees of group homes or LCIs not be allowed to accept educational rights from the students they serve. The state should develop a system of third party representation for students without parents willing or able to participate in this process.

Eighth, SELPA directors expressed concerns that they are not always immediately informed when NPS/LCI students are placed in their districts. Although this is required under IDEA '97, and a formal mechanism by which complaints can be made and appropriate remedies enacted is already in place, it appears that proper enforcement often does not occur. We recommend that existing regulations be reviewed and bolstered.

Ninth, SELPAs report that they find it difficult to obtain needed information for some NPS and LCI students, especially those who frequently move from school to school. When student transfers occur, academic records should be immediately provided to SELPAs to support continued appropriate placements. When students arrive in a new SELPA without any records, the new district must initiate a new IEP, which can be both inefficient and frustrating. A more efficient system needs to be enacted to foster better placement practices. Student records should be provided to SELPAs, NPSs, and LCIs by the placing agency immediately after NPS and LCI students arrive in their districts. The state may wish to consider an electronic database for all NPS students, perhaps through the enhancement of CDE's California Special Education Management Information System (CASEMIS) or through a separately constructed data system. For any of these systems to substantively alleviate this problem, unique student identifiers will need to be included. A more systematic coding structure for NPS identifiers is also needed on CASEMIS.

The tenth issue pertains to the reported concern that too little emphasis has been placed on the transition back to public schools, especially for LCI students. There is no fiscal incentive to move LCI students back and no administrative funds available to SELPAs to support follow-up for these students. To address these problems, all fiscal incentives for NPS placement need to be removed. SELPAs also should continue to be held directly responsible for the ongoing monitoring of all NPS students. SELPAs should determine when a student is ready for a less restrictive placement and for ensuring the most appropriate placement on an ongoing basis. Lastly, SELPAs should be provided with the fiscal resources needed to support these kinds of ongoing monitoring and support activities.

An eleventh issue that emerged from the interviews and our advisory committee was that outside agencies sometimes come to IEP meetings with prediagnoses that call

for certain placements and programs that districts may consider more costly and restrictive than is appropriate to meet the educational needs of the child. To avoid these situations, it must be clearly communicated that the criteria for eligibility of service used by special education, mental health, CCS, probation, and other agencies are not the same. For this reason, it is essential that the various agencies refrain from attempting to prescribe services or make recommendations for services to be provided by other agencies.

Finally, it was argued that at times the state sometimes certifies NPSs that are too small or unable to meet appropriate facility, curriculum, instruction, or credentialing requirements. We recommend a review of current certification and monitoring procedures for NPSs to ensure the provision of high quality service for NPS students.

Chapter 3

What are the impacts of mediation and due process hearings on the use of NPSs and NPAs?

In this chapter, the impact of the due process system on the use of NPS and NPA is explored. The following questions posed in the RFP are addressed in this chapter:

- What is the history of mediation and hearing outcomes and their effect on the use of NPS and NPA?*
- Are there changes to the process (changes in state law, etc.) that could reduce the use of NPS and NPA? Are there practices that lessen the necessity to resort to hearings?
- What are other states doing in this area?

To examine these questions, the due process system in California is first briefly described. Second, mediation and hearing outcome data provided by the Special Education Hearing Office (SEHO) are summarized. Third, findings from SELPA, NPA, NPS, and state policy interviews regarding the perceived strengths and weaknesses of the due process system are presented. Fourth, changes to the due process system in California and practices that reduce the need to go to hearing are examined. This is followed by results of interviews with directors of special education from other states to understand if other states' practices in this area can help inform ways to improve the system in California. Finally, policy recommendations are discussed.

California's due process system for resolving special education disputes

The SEHO's *Notice of Procedural Safeguards* (June, 1997) and the *California Special Education Programs: A Composite of Laws* (20th Edition, 1998) describe the mediation and hearing process. Mediation conferences and hearings can be requested by parents or guardians of students who are disabled or suspected of

* The RFP also states that analysis of hearings should include "the effect of prior decisions on the willingness of parents and districts to seek a due process hearing" (p. 10). The difficulty of addressing this issue is discussed later in the chapter.

being disabled, local education agencies (LEAs), or pupils.[9] Requests can be made when there is a dispute between a parent and a public agency providing special education services regarding a child's eligibility for special education, need for assessment, or programs and services. Mediation is encouraged as a first step in dispute resolution, as it is informal and takes place in a nonadversarial environment. In fact, the law requires that mediation conferences be scheduled upon requesting a hearing, although participation is voluntary and either party can waive the right to mediation.

Two types of mediation are specified by state law: (1) a pre-hearing mediation request, and (2) a due process hearing mediation request. Pre-hearing mediation is used to encourage parties to resolve disputes prior to requesting a hearing. Attorneys and other independent contractors can be consulted before or after a pre-mediation conference, but can not attend or participate (non-attorney advisors can attend). Once a hearing has been requested, parties can be represented by an attorney. Mediation conferences are scheduled to occur within 15 days of the hearing request and must be completed within 30 days of the hearing request, unless all parties agree to an extension. Mediators are selected to be knowledgeable of the process of reconciling differences in a nonadversarial manner, and of the laws and regulations governing special education.

If a dispute cannot be resolved through mediation, a state-level hearing is held. A hearing is a more formal legal process where all parties can present evidence and arguments before impartial hearing officers. Hearing officers are selected to be knowledgeable of the laws governing special education and administrative hearings.[10] All parties participating in a hearing have the right to be accompanied and advised by counsel, and by individuals with special knowledge or training related to students with disabilities. Additionally, the district superintendent should provide both parties a list of persons and organizations within the geographical area that can give free or reduced cost representation or other

[9] Pupils who are emancipated from their parents, or wards or dependents of the court for whom no parent can be identified, can also request mediation and hearings.

[10] Specifically, the *California Special Education Programs: A Composite of Laws* (20th Edition, 1998) states that the organization contracted to conduct mediation conferences and due process hearings should employ "persons knowledgeable in administrative hearings and laws and regulations governing special education" (5-5). Title 5 of the *California Code of Regulations* states that hearings shall be conducted by "a hearing officer knowledgeable in administrative hearings and under contract with the State Department of Education" (A-51). The law does not offer any more specifics on the job requirements of hearing officers or mediators.

assistance to prepare for a hearing.[11] The hearing date is usually 25 days after the hearing request. A written decision must be mailed within 45 days of the hearing request, but can be extended by a hearing continuance or postponement. Parties have the right to appeal the hearing decision within 90 days. Attorneys' fees are reimbursed to parents only if they prevail in the hearing.

Mediators and hearing officers have been contracted through the University of the Pacific's McGeorge School of Law by the California Department of Education's SEHO since 1989. Table 3-1 summarizes the background and legal training of the mediators and hearing officers currently employed by the SEHO.

Table 3-1. Background and Training of McGeorge Mediators and Hearing Officers

Position	Have Special Education Background[1]	Have Law Degree	Have Both	Have Neither	Total
Mediator	15 (94%)	7 (44%)	6 (38%)	0	16
Hearing Officer	4 (57%)	7 (100%)	4 (57%)	0	7
Total	19 (83%)	14 (61%)	10 (43%)	0	23

(1). People were coded as having a background in special education if they had applied experience working in an educational or community setting with special education students or people with disabilities. People with only academic experience, such as summarizing SEHO hearing statistics while in law school or taking a course in special education, were not counted.

Table 3-1 shows that almost all of the mediators (15/16) have a background in special education. Almost one half of the mediators have a law degree, and over one third have both a law degree and a background in special education. Fewer hearing officers than mediators have backgrounds in special education (57% of hearing officers compared with 94% of mediators), and all of the hearing officers have law degrees. Overall, 83% of the mediators and hearing officers have special education backgrounds and 61% have law degrees.

[11] The superintendent has complete discretion in determining which individuals or groups are included on this list.

It is important to consider the information presented in Table 3-1 in the context of the position requirements. The position specification for hearing officers indicates that the minimum qualifications for this job are that the applicant is "either a graduate of an ABA accredited law school or holds an advanced degree in the field of education with extensive experience in the field of special education, including supervisory or policy making responsibilities." Therefore, although candidates for this position can either be lawyers *or* experts in special education, all current incumbents are attorneys and only four out of seven have backgrounds in special education. There is no position description for mediators.

History of mediation and hearing outcomes

The SEHO has been collecting data on mediation and hearing outcomes since 1989, when the contract between the SEHO and McGeorge School of Law commenced. These data include the number of mediation and hearing requests, the number of cases that are resolved before they go to hearing, the party requesting the mediation or hearing, the prevailing party, and the number of hearing decisions that are appealed. There are some limitations to these data that should be noted. First, the topics of hearing decisions have been collected since 1989, but comparable data for mediation conferences are not available.[12] Therefore, although there is aggregate data on the number of mediation conferences and the stages at which they are resolved, the number of conferences that involved NPSs or NPAs is unknown. *This limits the extent to which the effectiveness of mediation in resolving disputes concerning NPS and NPA can be assessed.* Second, the way in which issues are categorized for hearing outcomes is ambiguous in some cases. For example, the category "placement" includes a variety of types of placements, such as NPSs, special day classes (SDC), and public school programs. Similarly, the category "reimbursement" includes reimbursement for care in mental health services, as well as NPSs, NPAs, and SDCs. Despite these limitations, these data are important to understanding the role of the legal system in the use of NPSs and NPAs. Finally, it should be noted that although some inferences can be made about the effects of mediation and hearing decisions on the use of NPSs and NPAs, it is beyond the scope of this study and the available data to fully assess the extent to which NPS and NPA use is affected by these processes.

[12] The SEHO reports that it will soon begin collecting data on the issues resolved at mediation conferences.

Table 3-2 shows the outcomes of mediation conferences from 1989-1997. The data for the 1997 fiscal year are through March 1998.[13]

Table 3-2. Mediation Outcomes by Fiscal Year

Outcome	1989	1990	1991	1992	1993	1994	1995	1996	1997	Averag
Resolved dispute	231(57%)	314(58%)	324(49%)	317(41%)	375(56%)	451(41%)	515(46%)	585(42%)	508(46%)	48%
Withdrew before mediation began	23(6%)	49(9%)	156(24%)	147(19%)	131(19%)	221(20%)	202(18%)	240(17%)	158(14%)	16%
Withdrew after mediation began	40(10%)	68(12%)	84(13%)	139(18%)	96(14%)	147(13%)	96(9%)	116(8%)	73(7%)	12%
Dismissed before mediation	0(0%)	10(2%)	11(2%)	7(1%)	22(3%)	59(5%)	86(8%)	158(11%)	127(11%)	5%
Dismissed after mediation, before hearing	0(0%)	60(11%)	1(.1%)	3(1%)	3(1%)	99(10%)	92(8%)	158(11%)	134(12%)	6%
To hearing	110(27%)	44(8%)	80(12%)	154(20%)	45(7%)	115(11%)	123(11%)	135(10%)	111(10%)	13%
Total	404	545	656	767	672	1092	1114	1392	1111	861

Table 3-2 shows that the most common outcome of mediation conferences was a resolved dispute. On average, 48% of cases were resolved at the mediation stage over the time period. Further, only a small proportion of cases ever went to hearing. An average of 13% of all mediation cases went to hearing. Most cases were either resolved at mediation, withdrawn, or dismissed. These data suggest that mediation is a successful means of resolving special education disputes and averts cases from going to hearing.

Figure 3-1 shows the number of hearing requests and hearing decisions by fiscal year.

Figure 3-1 illustrates that the number of hearing requests increased considerably from 1989 to 1996, with an average gain of 136 per year. This may indicate a heightened awareness among parents of their right to challenge special education disagreements procedurally, or a combination of this and other factors. However, the number of actual hearing decisions remained fairly low and stable over the period. The data presented in Figure 3-1 shows that while the number of hearing requests is high, the actual number of cases that are litigated is fairly small.

[13] Data through June 1998 are not yet available.

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Figure 3-1
Number of Hearing Requests and Hearing Decisions by Fiscal Year

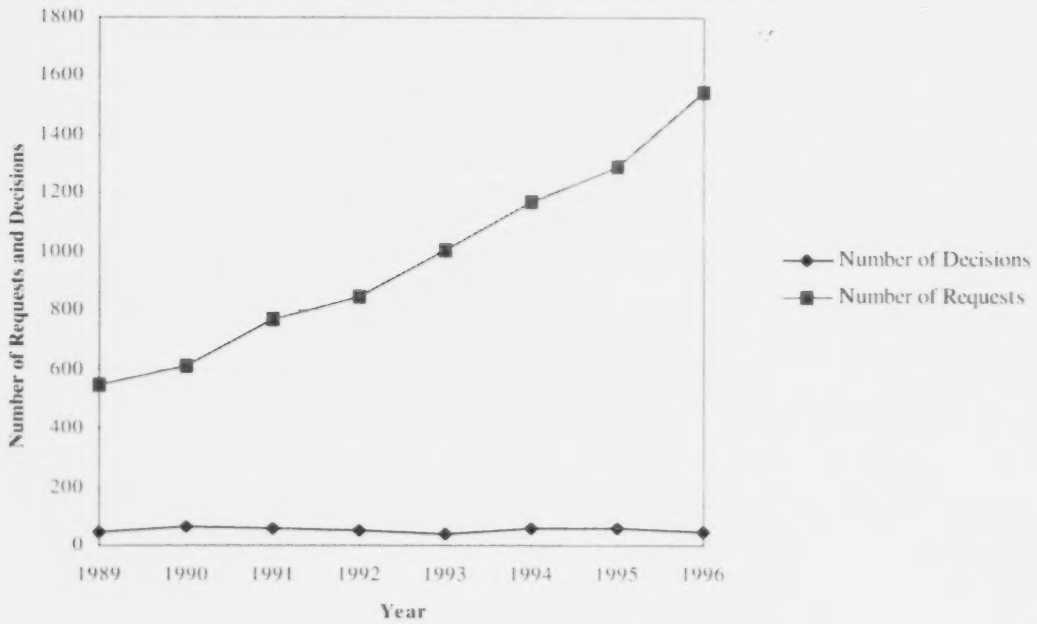

Table 3-3 shows the parties who requested hearings by fiscal year. Hearings can be requested by the parent (or other legal guardian), the LEA, or the student.

Table 3-3. Party Who Requested Hearing by Fiscal Year

Party	1989	1990	1991	1992	1993	1994	1995	1996	1997	Average
Parent	508(93%)	572(94%)	717(93%)	785(92%)	937(93%)	1087(93%)	1176(91%)	1426(92%)	1001(88%)	92%
LEA	41(7%)	37(6%)	55(7%)	61(8%)	67(7%)	77(7%)	107(8%)	122(8%)	134(12%)	8%
Student	0(0%)	2(.3%)	0(0%)	3(.3%)	0(0%)	6(.5%)	6(.5%)	0(0%)	0(0%)	.1%
Total	549	611	772	849	1004	1170	1289	1548	1135	992

Table 3-3 shows that there were an average of 992 hearing requests per year. The majority of requests for hearings over the period were by parents (overall average 92%), followed by LEAs (overall average 8%). Students requested very few hearings. Although not presented in this

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table, there were also a small number of pre-hearing mediation requests from 1992-1997 (an average of 72 per year).

Table 3-4 presents the issues that were the subject of final hearing decisions from 1989-1997. Note that hearing decisions can involve multiple issues, which is why the number of issues is greater than the number of decisions for each year. The data for the 1997 fiscal year are through March 1998.

Table 3-4.Issues in Final Hearing Decisions by Fiscal Year

Issues	1989	1990	1991	1992	1993	1994	1995	1996	1997	Average
Assessment	7(16%)	12(19%)	6 (10%)	8 (16%)	9 (23%)	11 (18%)	15(26%)	14(30%)	20(33%)	21%
DIS	10(22%)	20(31%)	15 (25%)	6 (12%)	0 (0%)	21 (35%)	23(40%)	15(33%)	14(23%)	25%
Eligibility	11(24%)	8(13%)	11 (18%)	10 (20%)	2 (5%)	4 (7%)	10(18%)	9(20%)	8(13%)	15%
Expulsion	3(7%)	0(0%)	1 (2%)	0 (0%)	1 (3%)	4 (7%)	1(2%)	1(2%)	0(0%)	3%
IEP General	0(0%)	3(5%)	3 (5%)	4 (8%)	7 (18%)	4 (7%)	9(16%)	5(11%)	6(10%)	9%
IEP Goals/Objectives	1(2%)	2(3%)	2 (3%)	3 (6%)	3 (8%)	3 (5%)	5(9%)	5(11%)	4(7%)	6%
Jurisdiction	3(7%)	2(3%)	0 (0%)	1 (2%)	0 (0%)	2 (3%)	0(0%)	0(0%)	1(2%)	2%
NPS Funding	2(4%)	7(11%)	2 (3%)	5 (10%	8 (20%)	7 (12%)	13(23%)	8(17%)	14(23%)	14%
Placement	23(51%)	37(58%)	24 (40%)	26 (59%)	21 (53%)	23 (38%)	33(58%)	20(43%)	40(67%)	52%
Program	0(0%)	9(14%)	5 (8%)	1 (2%)	2 (5%)	11 (18%)	15(26%)	12(26%)	16(27%)	14%
Reimbursement	15(33%)	27(42%)	24 (40%	15 (31%)	13 (33%)	21 (35%)	22(39%)	16(35%)	26(43%)	38%
Extended School Yr.	0(0%)	3(5%)	0 (0%)	1 (2%)	1 (3%)	1 (2%)	0(0%)	1(2%)	6(10%)	3%
Other	1(2%)	6(9%)	16 (27%)	9 (18%)	11 (28%)	5 (8%)	3(5%)	1(2%)	14(23%)	14%
Total Issues	76	136	109	89	78	117	149	107	169	N/A
Total Decisions	45	64	60	49	40	60	57	46	60	53

Table 3-4 shows that there were an average of 53 hearing decisions per year. Issues associated with placement were the most common topics of hearing decisions, followed by reimbursement and assessment. On average, 52% of all hearing decisions involved issues of placement. It is important to note that the category of "placement" involves public, as well as nonpublic school programs. Similarly, the category "reimbursement" includes reimbursement for NPS and NPA, as well as SDC, mental health and other services. On average, 38% of the decisions involved issues of reimbursement. The issue of NPS funding did not represent a large proportion of hearing decisions during this period. An average of 14% of all decisions involved NPS funding.

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Figure 3-2 shows the percentage of hearing decisions that were won by parents and LEAs, and the percentage that were split decisions between parents and LEAs.

Figure 3-2 shows that overall, LEAs prevailed in a greater percentage of hearing decisions over the period than did parents. On average, LEAs won 49% of the hearings, parents won 31%, and 20% were split between the LEA and parents.

Figure 3-2
Percentage of Hearing Decisions Won by Parents and LEA, and Percentage of Split Decisions

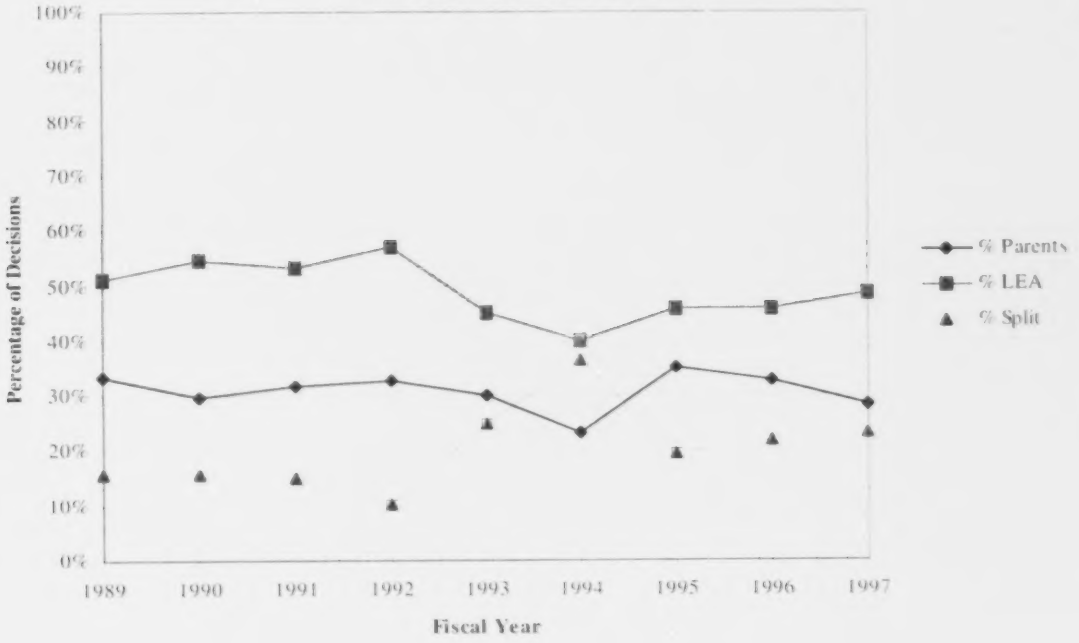

Figure 3-3 compares the number of appeals filed with the number of hearing decisions by fiscal year.

Figure 3-3
Number of Hearing Decisions and Number of Appeals Filed by Fiscal Year

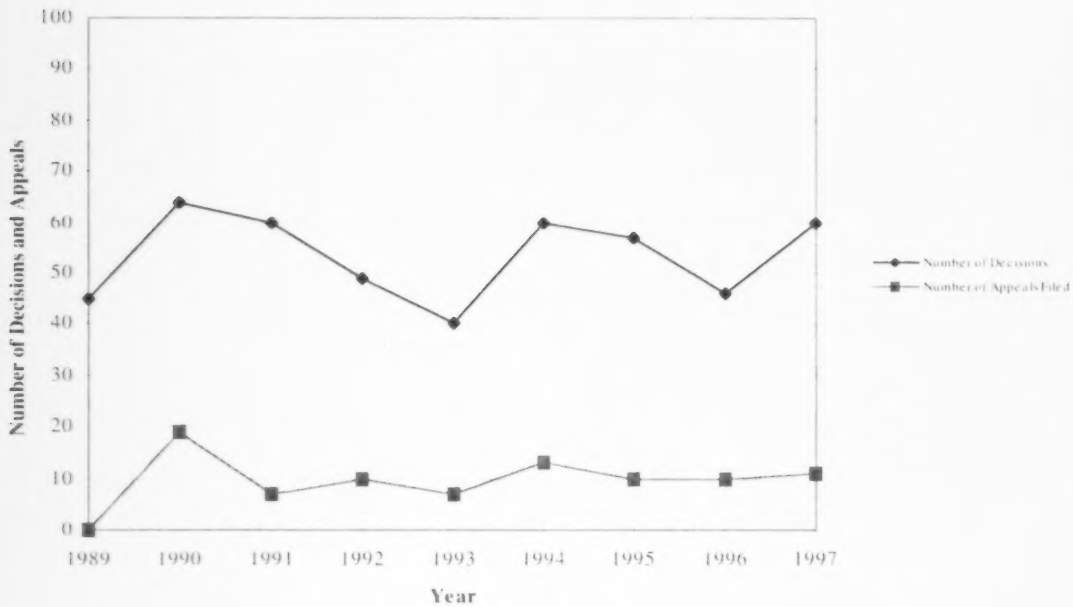

Figure 3-3 shows that a relatively small proportion of decisions were appealed. On average, 18% of the hearing decisions were appealed over the period. The greatest number of appeals was filed in 1990, which is also when there were the most decisions. This number dropped in 1991 and remained relatively stable for the remainder of the period. Of the appeals filed, 60% were filed by parents, 39% were filed by districts, and 1% was filed by another party.

Perceived strengths and weakness of the due process system

In this section, results from interviews conducted with 8 SELPA directors, 8 NPSs, 7 NPS/LCIs,[14] and 8 NPAs are presented. A random sample of high, medium, and low NPS use SELPAs was sampled; and a random sample of NPSs, NPS/LCIs, and NPAs was selected. Details on sampling procedures and response rates can be found in Appendix A. Further, data from interviews conducted with 15 people knowledgeable of state policy, including representatives of NPS, SELPAs, the Department of Education, the SEHO, and the Advisory Committee are discussed. All respondents were asked the following question: "Do mediation and due process hearings have an impact on the use of NPS and NPA?" Respondents were then asked to elaborate on why they believed the due process system did or did not have an impact.

SELPA interviews

Of the SELPA directors interviewed, the majority (71%) believed that the due process system did have an impact on the use of NPSs and NPAs. Moreover, most SELPA directors (86%) thought there were a number of problems associated with how special education disputes are resolved procedurally.

The most common problem cited was that SELPA directors were reluctant to participate in hearings because of the anticipated costs and the perception that there was little chance that they would prevail. Consequently, they often settle at the mediation stage, sometimes supporting programs believed to be unnecessary and inappropriate. Respondents often mentioned discrete trial therapies (DTT) used to treat autistic children as an example of programs considered inappropriate. Because these types of treatments are currently considered the most effective among some parents, SELPAs report having a difficult time presenting viable alternatives.[15] Although autism is a low incidence disability (autistic kids comprise 1% of all students in special education in California), supporting programs to treat autism can be extremely costly for districts.

SELPA directors were also concerned that mediators and hearing officers do not always have the necessary qualifications to decide which programs are most appropriate. Specifically, they believe that they should have backgrounds in special

[14] Separate random samples of NPS and NPS that serve LCI students were selected to be interviewed.

[15] It is important to note that although the treatment program developed by Dr. I. Lovaas at UCLA and similar discrete trial therapies for autism are currently in great demand, an interview with an autism expert from Stanford University indicated that to date, there have been no controlled studies to test whether this type of therapy is better than other autism treatments.

education programs and services, as well as special education law. Further, some SELPA directors were concerned that mediators and hearing officers are "biased" toward the parents and sometimes support non-certified, non-licensed programs.

A range of other concerns regarding the due process system were voiced by SELPA directors. These include that the system has created an adversarial relationship between parents and districts, that most hearings involve wealthier families who want their children to attend NPSs, that some NPSs referred parents to advocates or attorneys to get the district to pay for NPSs, that the belief that private is better than public drives decisions, and that hearings are longer and costlier than they should be.

NPS Interviews

The NPS perspective of the due process system diverges from the SELPA perspective in several ways. First, less than half of the NPS interviewed thought that the due process system has an impact on the use of NPS and NPA. Second, while almost every SELPA director interviewed voiced criticism toward the current system, most NPSs were more positive. In general, NPS directors consider mediation and due process a mechanism by which deserving children can receive necessary services unavailable in the public schools. Students who end up in NPSs, some directors believe, have already unsuccessfully tried programs in the public schools. There were a few individual criticisms of the system. For example, some NPSs report that the due process system as it pertains to NPS placement is unfair, claiming that the people who are willing to sue will get their children placed. One NPS went so far as to say that the due process system keeps NPSs in business.

The seven NPSs that serve a large proportion of LCI students (NPS/LCI) interviewed had a similar perspective to other NPSs. In addition, some NPS/LCIs reported having minimal involvement with the due process system. Further, they reported that maintaining collaborative relationships with the surrounding districts helped avoid conflict.

NPA interviews

In general, NPAs reported having minimal exposure to the due process system. This is not surprising, given that NPAs are usually involved at the end of the process, after students have been referred to them as the result of a hearing decision. Only two of the eight NPAs interviewed indicated that they believed the due process system has an impact on the use of NPSs and NPAs, and six either didn't know or couldn't answer the question because of limited experience. Only one NPA reported having regular experience with the due process system. This particular NPA reported working closely and collaboratively with districts when involved in a dispute.

State policy interviews

Our state policy interviews included representatives of NPSs, SELPAs, the Department of Education, the SEHO, and the Advisory Committee for this study, among others. Therefore, this category represents a diverse range of perspectives.

One commonality shared by almost all of these respondents was a general discontent with the system as currently configured. In addition to comments that reflect those summarized above for SELPAs and NPSs, criticisms of the current system included that parents sometimes make unilateral placements outside of the IEP process, and that sometimes students are placed in non-certified NPSs. One parent attorney interviewed believed that districts really had to do an awful job to lose hearings, implying that districts are better positioned to prevail in disputes. This respondent also accused districts of not being familiar with the special education literature and providing bad programs. One SELPA director reported feeling like an "insurance broker", always looking for the cheapest way to get out of the situation. Suggestions made by this group of respondents to improve the system include taking preventative measures, such as encouraging agencies to work collaboratively to decide what's best for the child before parents develop a mistrust in the public schools, and channeling the money that is currently used for litigation to support special education programs.

Interviews with representatives of the SEHO give some context to the perspectives presented thus far. In general, SEHO representatives believe that the due process system has a very insignificant effect on the use of NPSs. Further, while they believe the mediation system is good, they are concerned that the program is suffering, particularly because the pay rate for mediators has not increased from $25/hour since 1984. Hearing officers also make considerably less than other attorneys in the field. Consequently, it is difficult to recruit and retain highly qualified people to serve in these positions, as both mediators and hearing officers can pursue more lucrative careers elsewhere.

Additionally, while SELPA directors felt that mediators and hearing officers should be more familiar with special education programs, the SEHO contends that hearing officers are not supposed to be special educators, but lawyers who make decisions based on the options with which they are presented. They do not believe that their role involves determining the best placement for students, and sometimes very expensive private options are awarded because the district failed to inform the hearing officer of a less expensive alternative. Despite the fact that all current hearing officers are lawyers, it should be reiterated that the job description specifies that a hearing officer can be "either a graduate of an ABA accredited law school or hold an advanced degree in the field of education with extensive experience in the field of special education, including supervisory or policy making responsibilities."

This possible conflict indicates the need for clarification and consensus on the job requirements for hearing officers.

The SEHO respondents also discussed NPA services, such as discrete trial therapies, that are awarded as a result of legal decisions. Because the needs of autistic children are sometimes ambiguous, many districts, particularly the smaller ones, are not well equipped to meet their needs. Therefore, if the parents want DTT treatment and the district cannot present an appropriate alternative, the DTT might be awarded for lack of a better option.

Finally, representatives from the SEHO speculated that their case load might increase significantly after AB 602. Prior to AB 602, because the state reimbursed 70% of the cost of NPSs and NPAs, there was little incentive for districts to dispute a parent's wishes that SELPAs should pay for these services. This may change now that LCI students are the only ones for whom NPS costs are reimbursed, and that NPA costs are no longer reimbursable.

Changes to the due process system in California: Practices that lessen the need to go to hearing

More informal, alternative dispute resolution (ADR) programs are also being funded in California. These programs usually consist of a neutral party, such as an ombudsperson, attempting to resolve special education disputes locally. For the past three years, SELPAs have received money to develop ADR programs, and there are currently about 60 SELPAs at different stages of program development. Respondents who were asked about ADR programs generally believed they were working well, but there are currently no data with which to evaluate that contention.

An example of an ADR program that offers a variety of different services is the Contra Costa SELPA's "Multi-Door Access" program. This program includes a variety of prevention and local resolution activities to participate in prior to pursuing state resolution activities (i.e., formal mediation, hearings). Prevention activities include training, a parent support network that provides self-help meetings for parents of children with special needs, and an ombudsperson. Local resolution activities include a local fact finding process, which consists of informal reviews of complaints, a solutions panel, and an early neutral evaluation by a state consultant and the SELPA director.

What are other states doing in this area?

Nine directors of special education from other states were interviewed. States that were among the highest NPS users (8) were interviewed.[16] In general, the majority (63%) of state respondents reported that the due process system had minimal or no impact on the use of NPSs and NPAs. Some states noted that NPS placement only represented a small minority of the overall issues that were resolved in mediation and due process.

Many of the states interviewed are providing alternatives to minimizing the number of hearings. Many report having successful mediation programs that prevent many cases from hearings, which are much more costly. Some states provide training to districts and parents in conflict resolution and offer other pre-mediation programs, such as having a local ombudsperson or complaint line. Another state, with a mediation program that purportedly serves as a national model, also offers workshops in conflict resolution with school personnel and parent advocates through the department of education. One state director reported an increase in the number of hearings due to the fact that parents and attorneys have become more aware of key decisions, such as Burlington v. Department of Education for the Commonwealth of Massachusetts.[17]

The issues that are salient to other states closely mirror those in California. For instance, treatment for autism was frequently cited as being a contentious issue for other states. Further, particularly in the Northeast, districts struggle with overcoming the perception that private schools are always better than public schools. Also similar to California, it is generally believed that affluent parents, with a greater awareness of their rights, generally utilize the system more than the other parents.

Summary

This chapter addressed the impact of the due process system on the use of NPSs and NPAs. The extent to which the question could be answered was limited by the available data. For example, examining the effect of prior decisions on the willingness of parents and districts to seek a due process hearing was beyond the scope of this study and not possible with the available data. However, exploring the history of mediation and due process outcomes led to some important findings. First, although we only speculate how practices such as

[16] There was also one state with very low NPS use that was interviewed for this study, but had no experience with the due process system as it pertains to NPS or NPA.

[17] In Burlington v. Department of Education for the Commonwealth of MA, the Supreme court ruled that parents are entitled to be retroactively reimbursed for private school tuition (and other expenditures) if it's determined that the public school placement in the IEP was not appropriate and the unilateral private school placement was "proper".

mediation or ADR might reduce the use of NPSs and NPAs, the extent to which districts and parents work collaboratively and nonadversarially to resolve special education disputes could potentially give districts more opportunity to present alternatives to NPS and NPA services. Second, the findings suggest that mediation successfully prevents many cases from going to hearing. Most cases were either resolved at the mediation stage, withdrawn, or dismissed. Of the large number of requests, only a very small proportion actually went to hearing. Third, our findings suggest that California's due process system closely mirrors what other states are doing. Other states also reported having successful mediation and ADR programs to help prevent litigation. One state with a very successful mediation program also offers training to school districts and parent advocates in conflict resolution.

Policy recommendations

First, although the right to litigate is central to due process rights, litigation is viewed costly and adversarial, and should be used as a last resort. Mediation has proven to be an effective alternative to litigation both nationally and in California, and therefore should continue to be supported and encouraged.

Second, our results suggest that despite the successes of mediation as an alternative to litigation, it has also become a high stakes process in California. While less involved than litigation, mediation can also become quite contentious and difficult for children, parents, and school districts. Accordingly, the California Department of Education (CDE) and districts should continue to develop and implement ADR as a precursor to mediation. The state may also wish to conduct a thorough review of cases resolved through the due process system. This may lead to an increased understanding of how identification, referral, and placement processes may need to be modified to reduce growing pressures on the state's due process system.

Third, a number of respondents described the state's due process system as not working well as currently configured. Our interview data suggest that mediators and hearing officers are perceived as lacking certain qualifications considered important. Additionally, mediators and hearing officers appear to be under compensated given the magnitude and significance of the decisions they are asked to resolve. To address this, the process through which special education disputes are resolved may need to be restructured. A balanced team including special educators, lawyers, and other representatives may need to be established. Moreover, the qualifications for mediators and hearing officers should be defined to align more closely with what districts, parents, and other parties believe are appropriate. Further, compensation for mediators and hearing officers should be reviewed and adjusted to reflect the qualifications required for this position. Finally, training programs for mediators and hearing officers should be provided.

Fourth, our interviews revealed concerns that services provided as the result of due process decisions are sometimes inconsistent for children with similar needs across the state. This may result in more restrictive placements than are appropriate. For example, very costly DTT (e.g., Lovaas) are used to treat some autistic children without clear guidelines as to whether it is an appropriate treatment. SELPA directors interviewed also commonly reported that they are reluctant to go to hearings because they fear they will lose. Consequently, they sometimes pay for costly programs they believe are unnecessary, driving up the use of more extensive NPS, NPA, and other services. To remedy the inconsistency with which programs and services are provided, due process decisions may be better based on "best practices" in special education. However, these would require state or other guidelines to determine these "best practices".[18] In the absence of such standards, accepted methodologies and levels of care my vary considerably for each child. A similar set of guidelines related to treatment for autism is currently being developed in New York and will be released this July (Pediatric News, May 1998). These guidelines will be the first set of evidence-based clinical practice guidelines to address the proper care of autistic children. According to the director of the New York Department of Health Early Intervention Program, these guidelines could potentially help resolve the controversy surrounding intensive behavioral interventions, or the one on one protocol that emphasizes home schooling for autistic infants and toddlers, which currently must be provided by school districts under IDEA if they are determined to be "effective and appropriate".

Finally, the state may wish to review due process decisions in cases where students have been awarded services that are much more extensive than prevailing norms across the state. For instance, what factors of the case led to the award? What are the implications for avoiding the need for future mediation and/or litigation over this issue, and for establishing reasonable services standards applicable to all children with similar conditions? Such analyses could conceivably help resolve similar cases in the future.

[18] Such guidelines currently exist in other fields. For example, the American Psychological Association has published treatment guidelines.

Chapter 4

How do the Costs of Public Placements Compare with NPSs and NPAs?

How the costs of public placements compare with those in NPSs and NPAs is explored in this chapter. It should be noted that this study does not attempt a full and complete answer to this question. Four separate lines of inquiry were included within the scope of this study, and it was acknowledged that a full comparative analysis of public and private costs would require resources and time beyond what was allotted to this effort. In addition, this comparative cost question may be of somewhat less importance to the state in light of the provisions of AB 602. This law removes the fiscal incentive to use NPSs and NPAs in most instances (except in the case of NPS/LCI students) and puts each district in a position to determine the relative cost-effectiveness of contracting rather than providing services.

With these caveats in mind, analyses addressing the question of public versus private NPS and NPA costs are provided based on available data. These data include interviews with administrators from eight NPSs, five NPS/LCIs, eight NPAs, and seven SELPAs, findings from a previous analysis of NPS versus public costs (Parrish, 1987), cost estimates derived from the California Incidence study (1998), and information from NPS certification applications. The chapter concludes with a recommendation regarding avenues of possible further exploration of this and related questions.

Interview findings

The following question was asked in our interviews: "From your perspective, how do NPS/NPA costs relate to comparable public placements?" Over half (five out of eight) of the NPS respondents did not believe that NPS and public placements (and therefore costs) were comparable because different types of students end up in NPSs, two thought NPSs cost less, and one thought NPSs cost more than comparable public placements. Similarly, over half (three out of five) of the NPS/LCI respondents believed that NPS and public placements could not be compared, one thought NPSs cost less, and one reported that NPSs cost more than comparable public placements. Reasons cited as to why NPS are not comparable to public placements include that NPSs provide services that are not available in public schools and that NPSs deal with more difficult students. Reasons given for why NPSs were viewed as less costly than public placements include that NPSs are supported by local fund raising

and grants. NPS and NPS/LCI respondents who believed NPS cost more said this was because NPSs dealt with more difficult students who often have health and social problems, that NPSs provide more services, and that there are more staff per student.

Not surprisingly, the SELPA perspective on NPS costs diverged somewhat from the NPS perspective. The majority (five out of seven) of SELPAs interviewed believed that NPS cost more and two thought that NPS costs were similar to comparable public placements. One respondent believed that NPS costs are higher because they are less uniform. This respondent endorsed the idea that NPS costs should be standardized across districts.

NPA and SELPA respondents were asked how NPA costs relate to comparable public placements. More than half (five out of eight) of the NPA respondents did not know how costs compared. Two thought NPAs cost less, and one thought NPAs cost more than comparable public placements. One NPA respondent believed that NPAs cost less because it would be very expensive for a district to hire its own occupational and physical therapists (OTs, PTs). The NPA representative who believed NPAs cost more thought this was the case because NPAs make a profit.

Three SELPA directors thought NPAs cost more than comparable public placements, and one SELPA director responded that they were not comparable. SELPA directors who believed that NPAs cost more than comparable public placements said this was because pay at NPAs is not constrained by teacher salary scales and because SELPAs may only have one NPA to choose from, which allows NPAs to drive up their rates.

In summary, the NPS directors tended to argue that these students are not the same as those in the public schools and consequently that direct cost comparisons could not be made. The majority of SELPA directors, on the other hand, expressed the opinion that NPS costs are higher than comparable public placements. The majority of NPA directors did not know how these costs compared, with the majority of the SELPA directors saying that the NPAs cost more.

Next, we will explore what can be learned from the available data on these questions. However, as relatively little information exists to allow comparisons of NPA costs, most of the data provided in the following sections pertain exclusively to NPS versus public school alternatives.

Analysis of extant cost data

Table 4-1 compares NPS costs to public school costs. The sources for each estimate are presented in columns 2 and 4. These data show that the contract amount per full time equivalent (FTE) student derived from NPS certification applications closely approximates the NPS cost estimate derived from J-50 and CASEMIS data used in the California Incidence Study. Data gathered at case study sites adjusted to 1996/1997 dollars (Parrish, 1987), show a somewhat lower, but largely consistent, estimate of NPS costs.

Table 4-1. NPS Costs and Public School SDC Costs Per Student

NPS Cost Estimate (1)	Source (2)	Public School SDC Cost Estimate (3)	Source (4)
$22,244	J-50, CASEMIS, Incidence Study	$17,944*	CASEMIS, Incidence Study
	NPS certification applications (sample of 36 sites)	N/A	N/A
$24,941	Contract amount per FTE student		
$28,639	Budget amount per FTE student		
$19,573	Average from four NPS case study sites, adjusted to 1996/97 dollars (from Parrish, 1987)	$12,383	Average from four public school case study sites, adjusted to 1996/97 dollars (from Parrish, 1987)

* this estimate reflects special day class (SDC) and average numbers of related services received by serious emotionally disturbed (SED) students placed in SDCs.

Based on two sets of estimates shown in Table 4-1, public schools costs appear to be about one-quarter to one-third less than NPS costs. The inflation adjusted estimates from a 1987 study comparing public and private costs (Parrish) appear particularly low. Because these estimates are lower both for the NPS and the public schools, it could reflect the nature of the sample selected or the cost inflator used to attempt to approximate 1996/97 prices.

Parrish (1987) concluded that there were a number of reasons why NPSs appear to cost more than public placements. First, he argues that because the students served in NPSs often require more intensive services, public programs are really not

comparable to those offered through NPSs. This finding is consistent with the responses given by over half of the NPS directors interviewed for the current study. It was also acknowledged by SELPA directors that the NPSs generally enroll students the public schools are not equipped to serve.

In an attempt to measure the relative severity of students served in NPSs, Parrish (1987) worked with an NPS advisory committee to derive a typology of behaviors sometimes associated with NPS students. Measures of the incidence of these behaviors across the 38 schools he surveyed are shown in Table 4-2. Although no comparable data is available for SED students served in public settings, the severity, and relative prevalence, of these behaviors seems to corroborate the contention these students would be difficult to serve in regular public school settings. For example, close to one-half (43 percent) of all students were said to by physically assaultive and over one-third (34.4 percent) were said to exhibit "firesetting" behaviors.

Table 4-2. Behavioral Characteristics of Students Enrolled in NPS (Parrish, 1987)**

Student Behaviors	% of Students All Schools	Number of Schools Reporting (N=30)
Actively Suicidal	4.3%	14
Verbally Assaultive	2.8%	14
Physically Assaultive	43.0%	25
Physiological Disorder	16.8%	23
Firesetting	34.4%	28
Runaway Behavior	9.1%	19
Actively Psychotic	14.8%	29
Inappropriate Sexual Behavior	17.8%	25

** As students were counted in each behavioral category that applied, these percentages add up to more than 100%.

Based on the analyses of six public and four NPS sites included in Parrish's 1987 intensive study (at least one full day was spent collecting data at all ten sites), he concluded that students receive more intensive levels of services at NPSs. He found class sizes to be smaller in NPSs, overall ratios of students to professional staff to

be smaller, the number of instructional hours per year to be greater, and more related services per student.

These findings are supported by data used for this study from the NPS certification applications and from program specifications conducted for the California Incidence Study (1998). Student to teacher ratios in the NPS were shown to be 6.1 to one compared to the average public SDC class size of 7 specified by the California Incidence Study advisory committee. Also, while NPSs reported an average school year of 215 days, the average public school year for SED students in SDC classes is reported to be about 200 days.

Although exactly comparable data are not available, it also appears that related services are more readily available to students in NPSs. A listing of the related services reported by 38 NPSs surveyed by Parrish in 1987 is shown in Table 4-3.

Table 4-3. Related Services at NPS

Related Service	Number of Schools Offering			(N=38)
	To All Students	To Some Students	Total Schools	% of Schools
Speech/Language Therapy	10	21	31	81.6%
Individual Living Skills	21	9	30	78.9%
Individual Counseling	12	17	29	76.3%
Vocational Education	17	8	25	65.8%
Physical Education	23	1	24	63.2%
Adaptive P.E.	12	11	23	60.5%
Group Counseling	15	8	23	60.5%
Art Therapy	11	7	18	47.4%
Audiological Services	4	4	12	31.6%
Psycho-Therapy	4	7	11	28.9%
Dance Therapy	4	3	7	18.4%
Occupational/Physical Therapy	2	2	4	10.5%

Some of these supplemental services were provided to all students at these NPSs, and many others provided these services to some students. Physical education and individual living skills were provided as supplemental services to all students at the majority of these sample sites.

As a basis for comparison, the related services reported on the state's CASEMIS data base for all SED students served in SDCs in the state are shown in Table 4-4. While this includes a fairly extensive list of services, perhaps most striking is the relative small percentages of SED SDC students who receive them. For example, over one-half of the services listed are received by less than one percent of the states SED SDC population. On the other hand, some of the services listed for NPS, above, such as physical education may be assumed for public school students and not counted as a related service. However, in some of the areas that are directly comparable, the incidence of service seems higher at the NPS. For example, while individual counseling is provided to all of the students at 12 of the 38 reporting NPS, and to some students at 17 others, only 15.5 % of the SED students served in SDCs in the public are shown to receive this service on CASEMIS. Similarly, while 15 of the responding NPS said they provide group counseling to all of their students, only 6.3 percent of public school SED SDC students are shown to be receiving it. While not definitive comparisons, they seem to support Parrish's earlier finding of higher levels of related service provision in NPSs.

Overall, because NPS teachers make less than their public school counterparts, Parrish (1987) estimated that the level of instructional services found on average in NPS would cost 37 percent more if provided within the public sector. These findings are in keeping with the contention that students in need of more intensive services are those eventually placed in NPS.

He also found levels of resources provided to students at NPS to relate to the reported severity of students served in terms of the behavioral characteristics shown in Table 4-2, above. Table 4-5 divides the 32 NPSs providing data on the indicators shown in this table into quartiles for the purpose of exploring the relationship between such resource indicators as student to teacher ratios and numbers of related services received to these behavioral indicators of severity. As shown, the number of students per instructional staff member was largest at NPSs serving students with the lowest average numbers of problematic behaviors, although surprisingly this ratio rises somewhat through the three highest severity quartiles. In terms of of related services, a consistently positive relationship is shown between student severity and the number of related services provided.

Table 4-4. Related Services for SED Students Served in SDCs in Public Schools

Related Services	Percent Receiving
Individual Counseling	15.5%
Psychological Services	12.4%
Language & Speech	12.0%
Group Counseling	6.3%
Adapted Physical Education	5.0%
Voc Ed Training	4.1%
Guidance Services	2.3%
Social Work Services	1.6%
Health/Nursing-Other Services	1.6%
Assistive Services	1.1%
Home & Hospital	0.8%
Parent Counseling	0.7%
Individual/Small Group Instruction	0.7%
Occupational Therapy	0.7%
Behavior Management Services	0.6%
Vocational Counseling	0.3%
Audiological Services	0.2%
Vision Services	0.1%
Itinerant Services	0.1%
Physical Therapy	0.1%
Specialized Driver Training	0.1%
Recreation Services	0.1%

Table 4-5. Behavioral Characteristics of NPS Students and Quantities of Instructional Resources According to Quartiles of Severity (Parrish, 1987)

Quartiles	Number of NPS	Behavioral Characteristics Per Student	Number of Students Per Instructional Staff Member	Number of Related Services on Site
(1)	(2)	(3)	(4)	(5)
Lowest	7	0.3	6.2	5.0
Mid-Low	8	0.9	4.0	6.6
Mid-High	9	1.5	4.3	8.0
Highest	8	2.8	4.8	9.0

Despite substantially lower teacher salaries on average in the NPSs, the combination of lower student to staff ratios, more services, and higher administrative costs per student result in higher NPS costs per student in relation to public services. In contrast to lower teacher salaries in NPSs, Parrish found that NPS administrators are compensated at a level similar to their public school counterparts. The smaller ratio of administrators to students in NPSs tended to lead to higher administrative costs per student.

However, these results do not address the question of higher or lower costs due to the differing characteristics of the children served across the two sectors. For this reason, the new funding provisions provided in AB 602, may provide the most pragmatic approach available to the state for assessing the relative cost-effectiveness of public versus NPS services for individual students. As the public and NPS sectors tend to predominantly serve different students, each case can be decided on its merits and local administrators are placed in a position to make decisions about the relative costs and benefits associated with public versus private placements based on the needs of each individual student in relation to available program alternatives. However, the funding provisions for NPS/LCI students are different under AB 602, as will be discussed in Chapter 5 of this report.

Wide range of resource variations across NPSs

Despite the remedies offered by AB 602, a remaining concern expressed by the advisory panel and a number of the individual respondents for this study was the unevenness of quality across NPSs. Parrish (1987) also found considerable variation in staffing patterns, costs and mix of services provided across NPS. This variation can be observed in an examination of some of the key descriptive elements included in the certification applications the NPS must submit to the state. In addition, concerns were expressed by the advisory panel for this study, and some of the interview respondents, that NPS certification procedures tend to be rather perfunctory focusing on a fairly limited set of criteria that may not be sufficient to ensure programs of high and comparable quality across all of the NPSs of the state.

Summary data from a sample of 36 NPS certification applications reinforces these concerns about consistency of program quality. Some key variables from a sample of 36 of the NPS certification applications submitted to the state each year are summarized below in Table 4-6:

Table 4-6. NPS Revenues and Anticipated Expenditures per FTE Student

(Number of schools = 36)	Mean	Min	Max
Contract ($)/FTE student	$24,966	$9,326	$38,704
Budget ($)/FTE student	$28,639	$13,748	$66,032

The NPSs included in this sample ranged in size from 7 to 164 students with an average size of 52 students. The average contract amount per FTE student was $24,941, but ranged from $9,326 per FTE student to $38,032. These numbers were derived by dividing total contract revenues by the FTE student count reported by each NPS. Of the 36 NPS applications reviewed, 8 showed average contract amounts per FTE student of $20,000 or less while 5 showed average amounts in excess of $30,000.

Average budgeted amounts per FTE student tended to be higher than the contract amounts, but were no less diverse. These amounts were derived by dividing total anticipated expenditures for the year, i.e. the budget total submitted by each NPS with its certification application, by its reported count of FTE students. As shown in Table 4-6, the budget amount per FTE student averaged $28,639 and ranged from $13,748 to $66,032. Out of 36 NPS applications, 6 showed average budgeted amounts per FTE student of $20,000 or less while 11 showed average amounts in excess of $30,000.

The fact that the budgeted amounts, that which the schools intend to spend in the upcoming year, exceeded contract revenues from the prior year on average may simply be reflective of inflation and anticipated enrollment growth. It may also suggest the importance of outside fund raising for many NPSs. Thus, the contracted amounts charged to the schools in some instances may not cover the full cost of NPS services. However, budgets, as anticipated estimates of expenditure did not always exceed revenues received. While this was true for 17 of the NPS with full reporting of this information, for 10 other NPAs revenues exceeded anticipated expenditures.

For a fair number of sites, however, the reported budget amount varied considerably from actual expenditures. It may be advisable for the state to establish a requirement that all NPSs to develop their budget and financial reporting according to uniform accounting standards set forth by the Generally Accepted Accounting Principles (GAAP) standards used by most nonprofit, charitable organizations.

Other important indicators of the relative levels of service provided across NPSs are shown in Table 4-7. On average, NPSs provide an impressive ratio of three FTE students per professional staff member. For these purposes, we have defined professional staff to include teachers (not aides), administrators, counselors, psychologists, therapists, and medical personnel. This ratio of students per professional staff across the NPS applications reviewed ranges from 1.3 to 7.4. On average the number of school days provided was reported as 215, with this number ranging from 180 to 280.

Table 4-7. NPS Staffing Ratios and Length of School Year

	Mean	Min	Max
Enrollment	52	7	164
FTE students/per professional staff member	3.0	1.3	7.4
Number of school days included in contract	215	180	280

One basis for these variations in the levels of resources found across the NPSs might be the "level of care" required by the students served at each site. LCIs are certified to serve students needing a certain "level of care," with higher numerical designations meaning that these sites serve increasingly difficult students, who would be expected to require more intensive services. These LCI "level of care" designations can also be tracked to schools as an indicator of the severity of the students enrolled. Table 4-8 suggests that this indicator of variation in student need,

(i.e. the "level of care" designation for the site), does not explain the variations observed in the critical resource of students per professional staff member. In fact, among the NPS certifications included in our sample, student to professional staff ratios actually rose on average with the level of care required - just the opposite of what would be expected. While students at the lowest level of care institutions included in our sample (9 & 10) reported student to professional staff ratios averaging 2.4 (the average of 2.8 and 2.0) the highest level of care institutions (13 & 14) reported an average ratio of 3.6 (the average of 3.5 and 3.7).

Table 4-8. Student to Professional Staff Ratios by Level of Care

Level of Care	Ratios
9	2.8
10	2.0
11	2.7
12	3.7
13	3.5
14	3.7

A final indicator of the variation in the quality of services provided across NPS is the percentage of staff holding appropriate licenses across the various groups of professionals employed by NPSs. As shown in Table 4-9, across all of the NPS sites included in our sample, this ranged from 86 percent for teachers to 66 percent of the counselors and psychologists listed on the NPS certification applications filed with the state. Of all of the professional staff listed on the certification applications submitted to the state for these 35 sites, 73 percent of the professional staff were reported to hold appropriate licenses. Again, however, these averages mask considerable variation in the percent of professional staff holding licenses across the sample sites. As shown in Table 4-9, while a fair proportion of these sites reported 100 percent of their staff holding licenses in each of these professional areas, significant numbers of these sites showed 50 percent of their staff or less across these professional groupings as holding appropriate licenses. For example, only slightly more that one-half of the reporting sites (17 of 32) reported that more than 50 percent of their administrative staff held licenses and two-thirds of reporting sites (8 of 24) reported greater than 50 percent incidence of licensing among their counselors and psychologists.

The disparities in revenues, budgeted expenditures, and staff resources across this sample of NPS sites appear to raise questions for the state regarding uniformity in the quality of NPS services. While student to staff ratios may be lower for NPSs, as reported by many of the respondents for this study, the resource disparities across sites and the variations in the percentages of staff with licences raises questions about

uniformity in the quality of services. Lower student to staff ratios may not benefit students if these staff are not properly trained.

Table 4-9. Percentage of Licensed Staff Across Sample NPS Sites

	Number of reporting sites	Percent with Appropriate License	Number of sites with 50% or less	Number of sites at 100%
Teachers	34	86	5	24
Administrative staff	32	83	15	13
Counselors/psychologists	24	66	8	13
Therapists	17	70	4	13
Medical staff	11	95	0	6
All professional staff	**35**	**73**	**6**	**9**

Conclusion

There seems to be fairly uniform agreement that NPSs and NPAs constitute important service and placement options within the continuum of services for special education students in California. At the same time, the fact that the number and percentage of students being served in NPSs in California has grown appreciably over the past decade raises concerns. What factors are driving this increasing number of NPS placements? With increasing expenditures on NPS services statewide, more questions arise as to the cost of these services in relation to public schooling options. Effectiveness questions are also raised. To what extent are NPSs held accountable to the same certification, staff eligibility, and monitoring standards as the public schools? Conversely, to what degree are increasing NPS placements being driven by a lack of quality public alternatives?

It is also generally agreed that NPSs tend to serve different students than those found in comparable public sector programs. All of these factors complicate cost comparisons across public and private schooling sites. While it looks like NPS services cost more on average than their public school counterparts, it also appears that they provide more intensive and more extensive services as befits students with more intensive educational requirements.

A major concern associated with NPS and NPA use prior to the passage of AB 602 was the fiscal incentives faced by many SELPAs to use these services. This raised the question of the extent to which these provisions were encouraging SELPAs to place children in programs and in services that they might not otherwise have used.

AB 602 addresses many of these concerns by placing public and private programs on an equal footing from the local financing perspective. This is true for all except NPS/LCI students, which are discussed in the next chapter. Thus, the implementation of AB 602 may render questions of the relative cost of public versus private programs to be somewhat less important from a state perspective.

The more pressing problem from the state's perspective may the relative cost-*effectiveness* of these private program options in relation to what the public schools can provide. While public and private programs will generally be on an equal footing in terms of local placement decisions from a funding perspective under the provisions of AB 602, SELPAs may still be encouraged to use NPSs and NPAs for the wrong reasons if they are held to lower certification, staff eligibility, and monitoring standards than their public counterparts. That is, when local administrators are asked to compare the costs of a public program with more stringent personnel standards to private programs with less exacting requirements, the latter may be found to be advantageous from a cost but not necessarily from a cost-effective perspective.

The extent to which these types of disparities exist across the public versus NPS service sectors require further study. However, the disparities in funding, budgeted expenditures, and staffing across the NPS sites included in the sample for this study raise concerns about the uniform quality of NPS programming and suggest a possibly greater role for the state in terms of ensuring more uniform standards of quality for NPSs and NPAs across the state.

Policy recommendations

While the question of public versus private costs may still be of interest to many policy makers, from a practical perspective it may be largely moot in light of AB 602, except for NPS/LCI children. Beyond the NPS/LCI exception, every SELPA will be faced with the decision to purchase NPS services, or to provide comparable services locally, given the fixed amount of funds available to them. If the state still wishes to pursue the question of public versus private costs for special education services, a fairly intensive study designed to provide data representative of the state as a whole, and with methodologies for controlling differences in the characteristics of the students served should be conducted. To be successful, it is essential that sufficient time and resources be allotted. A more important role for the state may be to become more active in ensuring that comparable certification, staff eligibility, and monitoring standards be applied across all public and nonpublic programs and services.

Chapter 5

How Should the State Pay for NPS/LCI Placements?

The purpose of this chapter is to explore the fourth question listed in the scope of work, "How should the state pay for NPS placements for LCI students?" At the onset, however, several points need to be clarified. First, this question needs to be respecified. When stated in this way (i.e. linking NPS placements to LCI students) it is reflective of the basic problem underlying the funding of education services for LCI students in California. Because the current funding system *only* focuses on LCI students who are *also* placed in NPSs, it creates a considerable fiscal incentive for linking this residential status (i.e., LCI) for children to a particular type of instructional placement (i.e. NPS). To more appropriately address the problem confronting the state, the question needs to be restated as, "How should the state pay for instructional services for LCI students?" That is, we will argue that supplemental funding for the education of LCI students should be the responsibility of the state regardless of where these students receive their special education services.

Second, given the broad scope of this study in conjunction with its limited timeline and budget, we are *not* able to provide a detailed description of an education funding plan for LCI students. Considerable data questions need to be resolved and additional time needed for the full development of a data acquisition and funding plan. Rather, we describe the major proble s associated with the state's current system of funding for NPS/LCI students, point out why these existing provisions must be changed, and suggest the outline of an alternative approach for the state to consider in funding educational services for LCI students. We conclude with the recommendation that a subsequent study and/or panel be formed as soon as possible and provided sufficient time and resources to develop a detailed alternative approach to funding educational services for LCI students.

What is the problem with the current law?

As noted in prior chapters, ever since the passage of the California Master Plan (MP) in 1974, California has had a dual system for funding special education programs. Under the base program, the amount of funding districts received was primarily determined by the number of special day classes (SDCs), resource programs (RSPs), and designated instructional services (DISs) they provided and/or for which they could receive funding. In addition to the base formula, there were separate funding provisions for students served by NPSs and/or NPAs. A SELPA could either serve students with disabilities

locally or contract for services with NPSs and/or NPAs. When they contracted for these services, they were generally reimbursed at 70 percent of the cost. For many SELPAs, this created a fiscal incentive to use NPSs or NPAs, as opposed to providing these services within the public system.

Under the old state provisions, an incentive to use NPSs or NPAs existed because SELPAs' net costs (cost less revenues) were sometimes greater for students they served in public settings as opposed to when they placed students in private placements. Each SELPA received different levels of unit funding for publicly provided services, which were sometimes quite different across SELPAs for an identical service. Thus, each SELPA faced a different set of circumstances regarding the relative attractiveness of supplemental unit funding in relation to using NPS services and receiving a 70 percent reimbursement from the state. However, these decisions swayed further in favor of NPS and NPA placements when additional growth units could not be obtained for publicly provided services, in the case of SDC students for whom publicly provided DIS services would not count in the generation of additional DIS units, or when NPA therapists could not be hired under existing salary structures.

Although these fiscal incentives often existed for many students in need of the kinds of services the NPSs and NPAs provide, it certainly was not the case that local schooling officials would simply use cost calculations as the basis for determining whether to serve children in public or private placements. On the other hand, as shown in Chapter 4, the NPS population has doubled over the past ten years and it is believed that these fiscal incentives were one reason for this expanding use.

However, other than the NPS/LCI exception, virtually all these placement driven fiscal incentives associated with the old formula disappear under AB 602. For the most part, the amount of funding received under these new provisions are the same regardless of how or where children with special education needs are served. Because the state will continue to reimburse 100 percent of NPS costs for LCI students, however, a strong fiscal incentive in favor of this type of placement not only continues to exist, but is in fact substantially increased.

NPS costs for LCI students are reimbursed at 100 percent under AB 602. While this simply maintains the status quo from the prior law for these students, the magnitude of the incentive to pursue 100 percent NPS funding for LCI students is even greater than before. Whereas before NPS/LCI students could generate additional public revenue (by counting toward public funding units) when districts served them publicly, under AB 602 this is no longer the case. Unlike before, SELPAs now face the choice of serving LCI children in need of special education publicly and receiving *no* supplemental resources beyond the base funding they will receive anyway, or sending them to an NPS or serving them through an NPA and receiving *100% additional funding* for these services.

In addition to the concern that LCI children in need of special education services may be placed in NPSs when it is not most appropriate to their needs, is the problem of an incentive to place them in special education in the first place when it may not be fully justified. Under current law, any student residing in an LCI that has been placed within a district's boundaries by some state or local agency who may need counseling, or any other form of supplemental service that could fall under special education, is eligible for funding for this service *only* if they are placed in special education. Thus, even when an LCI student is not placed in an NPS, when they need any services that might be provided through special education there is an incentive to have them receive it through special education so as to qualify for additional state funding.

Why is this important?

While it not contended that these determinations are always, or perhaps even often, made on a financial basis rather than in response to the individual requirements of the child as required by law, the presence of such a clear fiscal incentive favoring one type of placement over another is not likely to be in the best interests of LCI children, or to foster the efficient use of public funds. Such policies also seem likely to violate federal law under the IDEA.

Reauthorizing legislation for the Individuals with Disabilities Act (IDEA 97) contains some important provisions related to the financing of special education, some of which may have direct application to LCI funding in California. One important issue pertains to state funding mechanisms that provide incentives for serving special education students in more restrictive settings, which conflicts with the least restrictive environment (LRE) provisions of the IDEA. IDEA 97 specifically refers to state special education formulas that differentiate funding based on where a student is placed. For example, a number of state formulas provide higher levels of funding for more restrictive placements. In addition, many placement based funding systems do not even include the general education classroom as a placement option. These types of provisions may create a disincentive for placing special education students in the LRE.

The law now mandates that states with funding systems that distribute money based on the type of setting in which a child is served have policies and procedures to assure that these placements do not violate the LRE requirement. If such policies are not in place, the state must revise the funding mechanism to ensure that it does not result in inappropriate restrictive placements.

Not specifically mentioned but in violation at least of the principles outlined in IDEA 97, are state formulas, such as California's, which reimburse school districts when students are placed in private or regional public settings, but do not offer comparable assistance for establishing comparable programs in neighborhood schools. In other words, these

dollars are not always able to follow students into less restrictive settings that may better suit their education needs.

Prior to IDEA 97, the U.S. Office of Special Education Programs (OSEP) initiated challenges to states with funding provisions thought to promote restrictive settings. For example, New York was the recipient of one of these challenges. Thus, even under old federal law, state funding systems that were seen to violate IDEA's LRE provisions could be considered out of compliance. Safeguards against funding provisions that encourage more restrictive placements are bolstered under IDEA 97.

Whether California's special education funding system under AB 602 is out of compliance with federal law is somewhat open to question. The references in IDEA 97 appear to primarily refer to base special education funding formula for states (eg., NPS or private placement funding provisions are not specifically mentioned.) In addition, under the state's new special education finance provisions, virtually all of the fiscal incentives for more restrictive NPS placements have been removed with the exception of the continuing 100 percent reimbursement of LCI students who attend NPSs. However, the magnitude of the incentive in favor of NPS and NPA placements for chidren residing in LCIs is so great in California that if a complaint were filed, it seems almost certain that it would not withstand federal scrutiny.

In addition, compliance with federal law is not the only criterion that should be used in assessing the state's NPS/LCI funding provisions. If they foster placements for LCI students with disabilities other than what would be chosen under the professional judgment provisions of the IDEA, they are likely to result in inefficiencies and not be in the best interests of LCI children.

The problem is *not* the existence of a continuum of placements for students with disabilities that includes separate public and private schools. Rather, it is the presence of fiscal *incentives* that *encourage* these restrictive placements that may be in conflict with IDEA. Thus, while a continuum of placements is required by federal IDEA law, the state's funding mechanism should not *favor* certain types of placements, but rather focus on best meeting the individual needs of the student.

How might the state's funding laws for LCI students be changed?

AIR research team and the advisory committee to this study agreed that several basic principles should underlie any revisions to the state's current funding system for LCI students. First, the state should continue to bear responsibility for funding educational services for LCI students placed within a district's boundaries by agencies outside the local school district. School districts have no control over how many LCIs may be placed within their attendance areas. LCIs are not randomly distributed in local communities

throughout the state and districts should not be penalized financially because disproportionate numbers of LCIs happen to locate within their boundaries. It is imperative that LCI children have positive relationships with their local school districts and these districts should not be fiscally disadvantaged when LCIs locate in a given community.

A second important underlying principle is that any system that only compensates local districts for the marginal cost of special services that LCI children need when they are served in an NPS or by an NPA must change. The state's responsibility to provide marginal support for LCI students must not be made contingent on identification for special education, placement in an NPS, or the provision of services by an NPA. This suggests that education funding for LCI students should not be based on the number of LCI students identified for special education, specific types of disability categories, or educational placement.

Third, the state should fund all of the marginal instructional costs for LCI children. Even under the current reimbursement plan, which supposedly covers 100 percent of costs, districts are not supported for the costs of initial placement or for ongoing monitoring and assessment. Identification and measurement of all of the functions that should be included in such marginal cost calculations remains to be done.

Given these principles, on what basis should instructional services for LCI children be funded by the state? The comprehensive study of special education funding in California conducted by the California Legislative Analyst's Office, the Department of Education, and the Department of Finance in 1995 made some preliminary recommendations in this regard. This study resulted in a document known as the *New Funding Model of Special Education: Final Report* which led to the passage of AB 602. In it, they outlined the following provisions (California Legislative Analyst's Office, Department of Education, and Department of Finance, 1995, p. 68-69):

- The amount of funding claimed in the base year by each SELPA for pupils residing in LCIs will be totaled statewide.
- This amount will be divided by the statewide population of pupils residing in LCIs on a student weighted basis.
- The number of pupils in placement at foster care rate levels 13 and 14 and in regional center or state developmental center placements will be multiplied by ten.
- The number of group home beds will be multiplied by five.

- The number of foster family home beds and the juvenile court ADA will be multiplied by two.

- Each SELPA will receive an allocation from the available funding based on its population of pupils residing in LCIs weighted as above.

- Although SELPAs would be protected from a reduction in LCI funding during the base year of implementation, in subsequent years LCI allocations would be adjusted based on the population change in each of the subgroups and cost-of-living.

The advantages of this approach, as proposed by the "Three Agency" team, over the current system is that SELPAs would receive funding based on the number of LCI students and/or beds within their attendance areas and that the amount of this funding would not be affected by the number of these students identified for special education or where their instructional services were received (i.e. in the public or private sectors). In this manner SELPAs uniformly receive support for factors beyond their control (i.e. numbers and types of LCI children located within their attendance areas), which is unaffected by factors within their control (i.e. special education identification and placement).

However, further development of this approach is needed. For example, in recent years, placing agencies have begun to favor the use of specialized foster home options to serve children that would have been served or served longer in either RCL 13 and 14 facilities or group homes. Since their needs for special education would not change, the proposed three agency recommendation would appear to reduce state support to SELPAs for these types of residential placements. In many cases, more extensive special education and related services may be needed for students in these specialized foster home settings in order to compensate for the absence of these services when placed in either an RCL 13 or 14 facility or group home, thereby resulting in increased costs for special education and related services and the proportionate level of state support.

The study team and advisory committee for the current project suggest the following refinements to the general approach described above:

- Because it is unclear how the weighting factors specified in steps 3 through 5 above were derived (i.e., on what basis the weights of 10, 5, and 2 were derived), it is suggested that a somewhat different approach to linking differential funding by type of LCI student be developed. This might be based on such factors as the presumed, or known, incidence of these types of children in need of high cost or other special education placements. As an initial estimate based on professional judgment the advisory committee

recommended assumptions that 100% of rate of care level (RCL) 13 and 14 children would require such placements, that they would be required by 45% of RCL 12 and group home children, and 20 % of foster home children. Further investigation as to the most appropriate weights or factors, however, is needed.

- Total funding under these provisions should be based on some estimate of the total cost of providing education to LCI students rather than be limited to the total statewide allocation in the year subsequent to implementation. For example, other factors such as the costs of public school assessments and ongoing monitoring, irrespective of public or private placement, should also be included.

What should happen next?

Beyond the specifications above, the study team for this project did not have sufficient time, resources, or data to specify an LCI funding model in the detail that would be needed for implementation. The "Three Agency" team also found this to be a difficult issue and were unable to "calculate LCI allocations due to data limitations" and the "time available"(California Legislative Analyst's Office, Department of Education, and Department of Finance, 1995, p. 68). Their experience seems to provide corroboration for our recommendation that this issue alone needs to be made the primary focus of a state study and/or investigation with sufficient time and resources to produce the data and engage in the deliberations needed for final resolution.

Questions that remain to be resolved include the following:

- It appears that data systems are not currently in place to provide reliable counts of students within the categories of LCI placement described above by school district. What needs to be done to produce such data, or what alternative data sources can be used to provide useful approximations of these counts?

- What should constitute the overall education funding base for LCI children? What is the best administrative factor to use and to what extent and how do extended year costs need to be incorporated for LCI children requiring such services?

- How can this funding system and the factors underlying it be made sufficiently flexible to reflect changes likely to occur over time?

- What unintended consequences might evolve from such a system (e.g. continuing incentives promoting inefficient practices) and what provisions need to be built into the system in an attempt to avoid them?

- What checks and monitoring should be built into the system to allow for review and adjustment over time?

What is encouraging is that we believe that with reasonable time and resources this issue is quite resolvable. The study team and advisory committee for this project is in general agreement with the type of approach that is briefly described above and that was recommended by the prior "Three Agency" study team. In addition, the current system of education funding for LCI students is sufficiently problematic that there is relatively little disagreement about the need for change. Questions that need to be resolved as quickly as possible are the exact data elements that will be needed and the specific provisions of the approach to be used for a funding system that ensures that LCI students receive the services that are best suited to their individual educational needs. This is not only imperative for their welfare, for which the state bears a higher level of responsibility than for other children, but for the provision of an efficient balance of public and private services across the state - an efficient system being one that provides the highest quality of services in relation to student needs at the lowest comparative cost.

We strongly recommend that the additional work that will be needed to reach a more clearly defined set of recommendations regarding educational funding for LCI students be undertaken as soon as possible. The current system is seen as exceedingly problematic in that it fails to promote education services for students residing in LCIs that are most appropriate to their individual needs. In this sense, it also promotes inappropriate use of public funds. In addition, it is questionable whether these provisions are in compliance with federal law as specified in the original provisions of IDEA and as further delineated in IDEA 97.

By moving quickly, it will also be possible to build on the initial work of the "Three Agency" study team as well as the work done throughout this project. For example, if such a study could be specified to allow a relatively concentrated focus on this question alone, could be carried out with the ongoing participation of the agencies involved with this study (i.e. the California Legislative Analyst's Office, the Department of Education, and the Department of Finance), and could continue with the same, or a similar, advisory panel as the one formed for this study, it is anticipated that this work could be completed within a time frame and budget similar to that specified for this larger project.

A final cautionary note, however, is that while the development of an appropriate educational funding system for children residing in LCIs is necessary, it is not sufficient,

to fully and satisfactorily address the full set of outstanding issues related to the provision of NPS services for LCI students. It is also important that some of the issues described in Chapters 2 and 3 also be considered and addressed to fully assure that children residing in LCIs will receive educational services most appropriate to their needs.

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Appendix A

- *Data and Methods*

APPENDIX A

Data and Methods

Data

Data for this study came from telephone interviews, site visits, extant data sources, and meetings with our advisory committee (AC). Each of these data sources will be described in detail below.

Figure A-1 shows the types of data that were used to answer the four main study questions.

Figure A-1: Chart associating data to questions

How do local NPS/NPA placements work? (Chapter 2)	**What impact does mediation and due process hearings have on the use of NPS/NPA? (Chapter 3)**	**How do the costs of public and NPS/NPA placements compare? (Chapter 4)**	**How should the state pay for NPS/LCI placements? (Chapter 5)**
Interviews with:	*Interviews with:*	*Interviews with:*	*Interviews with:*
16 NPS directors	3 McGeorge hearing officers	16 NPS directors	16 NPS directors
8 NPA directors	16 NPS directors	8 NPA directors	7 SELPA directors
7 SELPA directors	8 NPA directors	7 SELPA directors	9 State special education directors
9 State special education directors	7 SELPA directors	9 State special education directors	20 State policy advisors
20 State policy advisors	9 State special education directors	20 State policy advisors	
	20 State policy advisors		
Site visits to:	*Site visits to:*	*Site visits to:*	*Site visits to:*
3 NPS	McGeorge Law School	3 NPS	3 NPS
1 Pilot program		1 Pilot program	
Extant data and reports:	*Extant data and reports:*	*Extant data and reports:*	*Extant data and reports:*
A Report to the State Department of Mental Health and the California Department of Education	Hearing office annual reports	Certification applications	CASEMIS
New Funding Model of Special Education Final Report	*Notice of procedural safeguards*	CASEMIS	*NPS and NPA directories*
California Special Education Programs: A Composite of Laws	*California Special Education Programs: A Composite of Laws*	*Special Education Nonpublic School Mainstreaming Pilot Program: Evaluation to the Legislature*	*CSEF reports*
CSEF Reports	*California Code of Regulations*	*The Funding and Placement of Special Education Students in Public and Private Schools in California*	*NPS and NPA Certification Applications*
CASEMIS		Data generated for *Incidence Study*	
CBEDS			
18th Annual Report to Congress			
Advisory Committee	Advisory Committee	Advisory Committee	Advisory Committee

[1]See Appendix B and References for details.

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Telephone Interviews

Interviews were conducted with a sample of directors of California SELPAs, NPS, NPS/LCI, and NPAs. SELPAs with high, medium, and low NPS-use as defined by the percentage of all special education students who attended NPS were selected to be interviewed. A random sample of NPS were selected from the 1997 NPS directory. Because a comprehensive list of NPS/LCI was unavailable from the CDE, we used CASEMIS to generate a list of those NPS for whom [25% or more?] of its students were residential. From this, a sample of 10 were selected. [how were NPAs selected?] Further, state-level interviews were also conducted to understand the state perspective on the issues central to the study. State-level respondents from the three agencies were selected, as well as others recommended by the Advisory Committee. To understand how other states are dealing with issues pertaining to NPS, directors of special education from other states were also interviewed. The ten states with the highest NPS use were selected to be interviewed. Further, to understand how other states avoid using NPS, three states with little or no NPS use were selected to be interviewed.

Interviews were scheduled by an administrative assistant at AIR. At least three attempts were made to schedule interviews. The response rate averaged 63% across all groups selected to be interviewed. Some potential respondents weren't interested in participating in the study; there were others who didn't return calls or couldn't otherwise be reached after three attempts. Ten respondents from each group, except for the directors of special education from other states with low NPS use, were randomly selected. Five (50%) NPS/LCI, seven (70%) SELPA directors, eight (80%) NPS, five (50%) NPS/LCI, eight (80%) NPA, and eight (80%) directors of special education from states with high NPS use were interviewed. One of the three (33%) directors of special education from a state with low NPS use was interviewed.

Interview questions were constructed to closely reflect the main study questions from the RFP, and were approved by our AC and the Three Agency Committee prior to being implemented. Questions were tailored specifically to each group of respondents (e.g., SELPAs, NPS), although the protocol was the same. All questions were open-ended. On average interviews lasted for approximately ½ hour, ranging from ten minutes to over an hour. The interview questions and protocol are presented on the following pages. Although the interviews were semi-structured, questions and probes were added throughout the study as different issues emerged.

Interview Protocol

Introduction (Used for all groups)

Hi, I'm _____ with the American Institutes for Research. Thank you for taking the time to speak with me. California recently passed Assembly Bill 602 that changed the funding system for special education. Part of the bill mandated a study to address certain complex and unresolved issues. AIR is currently conducting the Nonpublic School and Nonpublic Agency Study that is included in AB 602. The major question to be addressed in this study is how the state should pay for NPS/LCI placements. We are also exploring such related questions as how local NPS/NPA placements work, how the costs of public and NPS/NPA placements compare, and what impact mediation and due process hearings have on the use of NPS/NPA.

This study is funded by the Legislature and monitored by the Legislative Analyst's Office, the California Department of Education, and the California Department of Finance. Dr. Tom Parrish, co-director of the Center for Special Education Finance, is overseeing the project.

Your [NPA/NPS/SELPA/State] was selected to be interviewed. The interview should only take about 15 minutes. Your participation in this study is extremely important, as your responses will help shape state disability policy. Your responses are completely confidential and will not be linked to your name in any way.

Interview Questions (NPS and NPS/LCI)

1. From your perspective, how do NPS/NPA costs relate to comparable public placements?

2. What do you think are possible advantages of NPS over public placements? What are some disadvantages?
   a. Some districts rely on NPS placements more than others. Why do you think that is?
   b. Costs are reported to be increasing for NPS/NPA services. Do you find this to be true? If yes, what appears to be driving this?
      Possible probes include:
      1. Cost of living
      2. Insurance Rates
      3. Cost/student, tuition
      4. Cost Overall
   c. Have you found it necessary to take steps to reduce costs? If yes, please describe.
   d. Do you have or know of alternatives to NPS/NPA placements?
      1. If yes, please describe these alternatives.
      2. Do you have any sense of the success of these alternatives?
   e. Describe any steps your organization has taken to assist students to avoid placement in an NPS or to reduce the amount of time spent there.
   f. From your perspective, are there instances in which an NPS placement might be considered unlawful or inappropriate? Under what conditions?

3. Do you believe there are any problems with the way the state funds NPS/LCI placements? If yes, please describe.

4. Do you find that due process rights have an impact on the use of NPS/NPA? If yes, please describe. Do you have suggestions on how things might be better? The following are additional questions to ask McGeorge School of Law:

   a. Who pays for the process? The lawyers (for both sides), judges, mediators, appeals?
   b. Who are the mediators? Do you think they are qualified?
   c. Can we make this system more efficient?

5. To what extent does the Mental Health Agency in your county provide needed services to your special education students? Probes:

   a. For example, do they cover the cost of residential placements?
   b. Are there problems that can be associated with the Mental Health Agency reaching a spending limit?

6. Are there other issues related to the funding and placement of NPS / NPA students that you would like us to know about? What are they?

7. If the state were to alter the funding policy to provide 100% reimbursement irrespective on public or private placements for LCI children, how would you respond?

Interview Questions: (NPA)

1. From your perspective, how do NPA costs relate to comparable services provided by LEA employees?

2. What do you think are possible advantages of NPA services? What are some possible disadvantages?

   a. Some districts rely on NPA placements more than others. Why do you think that is?
   b. Costs are reported to be increasing for NPS/NPA services. Do you find this to be true? If yes, what appears to be driving this?
   c. Have you found it necessary to take steps to reduce costs? If yes, please describe.

3. Do you find that due process rights have an impact on the use of NPS/NPA? If yes, please describe. Do you have suggestions on how things might be better?

4. Are there other issues related to the funding and placement of NPA students that you would like us to know about? What are they?

Interview Questions (SELPAs, State Policy)

1. Does your SELPA use NPS or NPA? If yes, continue question 2. If no, ask:
   a. What do you use in place of NPS or NPA? (This may also lead to question 3d).
   b. Instead of using an NPA, can you hire OT and PTs from hospitals? Would that be more cost efficient?

2. From your perspective, how do NPS/NPA costs relate to comparable placements?

3. What do you think are possible advantages of NPS over public placements? What are some possible disadvantages?
   a. Some districts rely on NPS or NPA placements more than others. Why do you think that is?
   b. Costs are reported to be increasing for NPS/NPA services. Do you find this to be true? If yes, what appears to be driving this? Possible probes include:
      1. Cost of living
      2. Insurance rates
      3. Cost / student, tuition
      4. Cost overall
   c. Do you have or know of public school alternatives to NPS/NPA placements?
      1. If yes, please describe these alternatives.
      2. Do you have any sense of their success?
   d. Describe any steps your organization has taken to assist students to avoid placement in an NPS or to reduce the amount of time spent there.
   e. From your perspective, are there instances in which an NPS placement might be considered unlawful or inappropriate? Under what conditions?

4. Do you believe there are problems with the way the state funds NPS/LCI placements? If yes, please describe.

5. Do you find that due process rights have an impact on the use of NPS/NPA? If yes, please describe. Do you have suggestions on how things might be better?

6. To what extent does the Mental Health Agency in your county provide needed services to your special education students? Probes:
   a. For example, do they cover the cost of residential placements?
   b. Are there problems that can be associated with the Mental Health Agency reaching a spending limit?

7. Are there other issues related to the funding and placement of NPS / NPA students that you would like us to know about? What are they?

8. If the state were to alter the funding policy to provide 100% reimbursement irrespective on public or private placements for LCI children, how would you respond? Would you continue to use NPS or would you begin to create district programs similar to NPS?

Interview Questions (Other State Special Education Directors)

1. How does your state pay for private special education school placements? (Distinguish between LCI, NPS/LCI, and NPS placements (and foster family), if placement is in-state or out of state, and the funding differences that depend on who places the child).

   a. Who are the kids who live in the residential facilities who are receiving special education? Are they primarily wards of the state? Who pays for their education and living costs? Does it depend on who makes the placement?
   b. Are there interjurisdictional issues? (who bears the responsibility of the child? Who monitors the child? Is there ever disagreement over this?)

2. Are your costs increasing for these services? If so, why? How is your state dealing with this?

3. Are you developing any new public alternatives to private special education schools (i.e. pilot programs)? If so, are they effective? Why? Why not? Do you think they'll offer a viable alternative to NPS/LCI placements in the future?

4. What impact does mediation and due process hearings have on private special education versus public school placements in your state? What does your state do to minimize due process hearings?

5. Are there major issues in regard to private special education placements in your state? How are they being addressed?

Site Visits

Originally, we had proposed to visit four public and four nonpublic sites providing services to comparable student populations. Ultimately, site visits were conducted at two NPS/LCI, one NPS, a pilot program developed as an alternative to NPS, and the McGeorge School of Law, which is contracted with the CDE to provide mediators and hearing officers for special education legal disputes. These site visits allowed more intensive exploration of the issues described above. During each visit, we interviewed teachers and district representatives. We also collect resource allocation information on site, using RCM data collection forms, to allow us to determine the marginal costs of the kinds of services found in both NPS and public school settings.

Extant data

Please see Appendix B.

Advisory Committee

An AC was formed to provide guidance to the research team throughout the project. The AC was comprised of two CA SELPA directors, a representative from the CDE, a program administrator from a CA county office of education, a director of an NPS, and the President of CAPSES. Five meetings were held with the AC throughout the project. In these meetings, the research team informed the AC of their progress, any problems obtaining data, and reported findings. The main issues and policy recommendations from the study were discussed in detail with the AC, and chapter drafts were sent to AC members for their comments, which were considered in writing the final draft of the report.

Appendix B

- *Data Sources*

APPENDIX B

Data Sources

April 1997 Special Education Enrollment Data. April 1997. Special Education. California Department of Education.

California Special Education Management Information System (CASEMIS). October 1997. California Department of Education.

J-50 Special Education Entitlement Forms. 1996-97. California Department of Education.

Nonpublic Agency Directory. September 1996. Special Education Division, California Department of Education.

Nonpublic School Directory. September 1996. Special Education Division, California Department of Education.

Notice of Procedural Safeguards. Special Education Hearing Office, McGeorge School of Law.

Position Specification for Special Education Hearing Officer. Special Education Hearing Office, McGeorge School of Law.

Quarterly Reports: April 1990 to March 1998. Special Education Hearing Office, McGeorge School of Law.

Renewal Applications for Nonpublic Agency Certification for 1998. Special Education Division, California Department of Education.

Renewal Applications for Nonpublic School Certification for 1998. Special Education Division, California Department of Education.

Special Education J-50 Funding: Questions and Answers prepared by Special Education Fiscal Services, Local Assistance Bureau, California Department of Education.

Special Education: Study of Incidence of Disabilities. September 1998. Office of the Legislative Analyst.

Appendix C

- *Number of Children ages 6-21 Served in Different Educational Environments*

APPENDIX C

Number of Children Ages 6-21 Served in Different Educational Environments** Under IDEA, Part B and Chapter 1 of ESEA (SOP), During the 1993-94 School Year

States ranked in descending order by percentage of total students in private facilities.

RANK	STATE	Total S.E. Students in State	% in Private Separate Facility	% in Private Residential Facility	Total % in Private Facilities
1	NEW JERSEY	171,840	5.347%	0.068%	5.414%
2	OREGON	17,430	3.339%	0.901%	4.240%
3	RHODE ISLAND	20,766	2.600%	1.454%	4.055%
4	CONNECTICUT	63,982	2.480%	1.144%	3.624%
5	MASSACHUSETTS	139,112	3.009%	0.563%	3.572%
6	PENNSYLVANIA	116,781	2.500%	0.475%	2.976%
7	NEW HAMPSHIRE	20,789	1.318%	1.655%	2.973%
8	ILLINOIS	222,944	2.320%	0.330%	2.650%
9	SOUTH DAKOTA	13,389	0.642%	1.912%	2.554%
10	NEW YORK	312,576	2.029%	0.517%	2.546%
11	VERMONT	9,220	0.965%	1.410%	2.375%
12	MARYLAND	85,526	1.629%	0.083%	1.712%
13	CALIFORNIA	481,746	1.243%	0.209%	1.452%
14	MAINE	26,477	0.646%	0.797%	1.443%
15	ARIZONA	62,150	0.932%	0.481%	1.413%
16	TENNESSEE	107,366	0.639%	0.537%	1.176%
17	ARKANSAS	46,443	0.609%	0.472%	1.081%
18	COLORADO	59,358	0.099%	0.957%	1.056%
19	VIRGINIA	117,328	0.697%	0.336%	1.033%
20	WYOMING	10,583	0.198%	0.690%	0.888%
21	MISSOURI	119,195	0.592%	0.144%	0.737%
22	MINNESOTA	78,193	0.432%	0.280%	0.712%
23	NORTH DAKOTA	11,093	0.117%	0.595%	0.712%
24	ALABAMA	90,420	0.346%	0.304%	0.650%
25	NORTH CAROLINA	121,471	0.371%	0.246%	0.617%
26	WASHINGTON	86,868	0.518%	0.021%	0.539%
27	KANSAS	43,995	0.273%	0.207%	0.480%
28	ALASKA	14,695	0.095%	0.231%	0.327%
29	OKLAHOMA	66,503	0.117%	0.209%	0.326%
30	NEBRASKA	33,475	0.233%	0.084%	0.317%
31	IOWA	56,740	0.000%	0.312%	0.312%
32	IDAHO	19,781	0.091%	0.101%	0.192%
33	MONTANA	16,270	0.000%	0.172%	0.172%
34	FLORIDA	243,735	0.142%	0.000%	0.142%
35	INDIANA	115,086	0.011%	0.127%	0.138%
36	LOUISIANA	75,849	0.058%	0.078%	0.136%
37	DELAWARE	13,271	0.083%	0.045%	0.128%
38	SOUTH CAROLINA	71,214	0.095%	0.029%	0.125%
39	HAWAII	13,366	0.067%	0.052%	0.120%
40	KENTUCKY	66,840	0.087%	0.022%	0.109%

41	GEORGIA	111,200	0.031%	0.063%	0.094%
42	NEVADA	22,027	0.005%	0.068%	0.073%
43	TEXAS	370,170	0.046%	0.012%	0.059%
44	MISSISSIPPI	59,626	0.000%	0.045%	0.045%
45	WISCONSIN	86,757	0.023%	0.016%	0.039%
46	WEST VIRGINIA	36,559	0.027%	0.011%	0.038%
47	NEW MEXICO	39,894	0.003%	0.018%	0.020%
48	UTAH	25,471	0.000%	0.000%	0.000%
49	OHIO	203,750	0.000%	0.000%	0.000%
50	MICHIGAN	84,901	N/A	0.307%	N/A
	50 STATES	4,504,221	2.819%	0.727%	1.237%
	50 STATES, D.C. & P.R.	4,748,839	0.960%	0.257%	1.217%
	U.S. and OUTLYING AREAS	4,757,373	0.958%	0.257%	1.216%

** Information taken from "Eighteenth Annual Report to Congress on the Implementation of The Individuals with Disabilities Education Act